EFFECTIVENESS OF MANDATORY BUSING IN CLEVELAND

HEARING

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

FIRST SESSION

SEPTEMBER 18, 1995

Serial No. 47

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EFFECTIVENESS OF MANDATORY BUSING IN CLEVELAND

MONDAY, SEPTEMBER 18, 1995

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE CONSTITUTION,
COMMITTEE ON THE JUDICIARY,
Cleveland, OH.

The subcommittee met, pursuant to notice, at 9:41 a.m., in the main auditorium, Cleveland Board of Education, 1380 East Sixth St., Cleveland, OH, Hon. Charles T. Canady (chairman of the subcommittee) presiding.

Present: Representatives Charles T. Canady, Martin R. Hoke, and Michael Patrick Flanagan.

Also present: William L. McGrath, counsel; Jacquelene McKee, paralegal; and Robert Raben, minority counsel.

OPENING STATEMENT OF CHAIRMAN CANADY

Mr. CANADY. The subcommittee will come to order.

This hearing is the first the subcommittee has held in this Congress on the topic of school desegregation and busing. Cleveland is one of hundreds of American cities where the public school system is under Federal court supervision designed to remedy prior segregation in the system. We have come here to study the history and the current status of Cleveland's experience in complying with the Federal court's orders.

Of course, it was the Supreme Court's landmark decision in *Brown* v. *Board of Education* that launched the enterprise of desegregating school districts, once divided along racial grounds. That decision began one of the most ambitious undertakings in social policy this country has ever seen.

As the residents of Cleveland know well, we are still, some four decades later, very much involved in that effort. In *Brown*, the Court held that legally enforced racial segregation of students in public schools harms the minority students in a manner that offends the equal protection clause of the 14th amendment.

In *Brown 2,* decided the year following *Brown*, the Court began to provide guidance to the lower Federal courts as to how this constitutional harm was to be remedied. The first step in the remedy was to remove legal barriers to integration. But it also required much more than simply stopping enforcement of prior segregation. The Court also held, consistent with general remedial principles, that the previously segregated school districts had a duty to make whole the victims of that segregation. That is, the districts had a legal obligation to restore the victims to the position they would

have held but for the segregation. This task made the desegregation enterprise vastly more complex.

To stop discriminating is one thing; to undo the effects of prior discrimination is quite another. Do not misunderstand me, it was fully appropriate for the courts to require school districts to make up for the injuries their discriminatory conduct created. I have absolutely no qualms with forcing constitutional violators to, as the Court put it in the 1968 *Green* case, "take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." It is this part of the desegregation task that has caused these cases to go on for decades at a time.

In *Green,* the Court said that there are six areas in which schools must be free from discrimination before court supervision could end: student assignment, faculty, staff, transportation, extracurricular activities and facilities. These areas comprehend most of what public school districts do and so these court cases involved judges in the most significant functions our school board officials are elected to perform. The result has effectively been to put Federal courts in the middle of running many of our Nation's public school systems. That judicial intervention was, of course, made in response to real injustices, but we must recognize, as the court has repeatedly held, that this court supervision is at odds with the fact that, and I quote, "No single tradition in public education is more deeply rooted than local control over the operation of schools." No matter how warranted it may be, Federal court supervision of a public school district interferes with the traditional power of elected school board officials to govern the district as they and their constituents deem fit.

After decades of establishing and refining the nature of a once segregated school district's remedial obligations, the Court in the past several years has begun to define when and how court supervision of these districts should be terminated. In the 1991 *Oklahoma City* case, the Court reminded the lower court that Federal judicial supervision of local school systems was intended as a temporary measure. The following year, in a case involving De Kalb County, GA, the Court reiterated that the ultimate objective of desegregation cases is to return school districts to the control of local authorities. The Court elaborated on this duty, and I quote, "Returning schools to the control of local authorities at the earliest practicable date is essential to restore their true accountability in our governmental system. When the school district and the State make decisions in the absence of judicial supervision, they can be held accountable to the citizenry, to the political process and the courts in the ordinary course."

In just this past term, the Court ruled that the lower court monitoring the Kansas City school district had overstepped the boundaries and extended court supervision beyond the time necessary to remedy the constitutional violation. The Supreme Court has begun, in other words, to move from defining the nature of the lower court's remedial duties to delimiting the scope of its continued supervision. This is a much-welcome and indeed a long overdue development.

In the past 22 years, the public school district in Cleveland has operated under close court supervision. We are here today to get a better understanding of the impact of the Court's involvement in the Cleveland school system, its impact on the lives of the students and the families of Cleveland.

I want to thank all of the witnesses who will be participating today. We are very pleased at the response of the witnesses we have requested to participate in the hearing.

I also want to particularly thank Mr. Hoke for his assistance in preparing for this hearing and helping us to obtain witnesses. I know that this is an issue of great concern to Mr. Hoke, I have been discussing the possibility of legislative action on this and I know that Mr. Hoke has some ideas about potential legislative approaches to this issue. I think that this is an appropriate issue for the Congress to be looking into and I look forward to continuing to work with Mr. Hoke on this very important issue.

And I would now like to recognize Mr. Hoke.

Mr. HOKE. Thank you very much, Mr. Chairman, and let me begin by expressing my gratitude and admiration to you for holding this hearing on Cleveland's experience with federally mandated and monitored school desegregation. This Subcommittee on the Constitution, by its very nature, is involved in issues about which Americans feel very deeply and hold passionate views, and I greatly admire the courage that you have shown in calling this hearing and in holding other hearings about controversial constitutional questions, and particularly your commitment to and success at holding these hearings in a fair, thorough and thoughtful manner—persuasive evidence that their purpose is to shed light and not to create heat.

I also want to extend my appreciation to Cleveland School Superintendent Richard Boyd, for graciously allowing us to use this facility for these hearings.

In my opening remarks, I want to take the opportunity to make clear why I have asked for these hearings to be conducted, what their purpose is and what we hope to learn and to gain from them. But because there has been a great deal of speculation and presumption regarding the hearings, I would like to say first what they will not be. First and foremost, these hearings will not be used to rewrite history. Specifically, it should be noted that the Cleveland School Board had a sad history of deliberately and consciously designing and maintaining segregated schools. The use of intact busing—which was the busing of an entire class of black students and their teacher from an overcrowded predominantly black school to an underutilized white school where they were to be taught as a single separate and isolated unit—as well as certain racially motivated construction patterns more than met the evidentiary standards required for a finding of de jure segregation. So that will not be a subject of discussion during these hearings.

It is the remedy not the problem that we are interested in here. These hearings are also not about creating a high profile public forum to be used for the purpose of opening old wounds, playing the blame game or further dividing a community in which there is already far too much distrust.

What these hearings are emphatically intended to achieve is the initiation of a broad congressional factfinding investigation into the Federal judiciary's mandating and supervision of school desegregation over the past four decades. This inquiry will be undertaken from two distinct perspectives.

First of all, the perspective of the impact and effectiveness of specific court-ordered remedies on schools and on the larger community. That is the primary purpose for our hearing today in Cleveland. For that inquiry to be effective, it must include an examination of the following questions: What has the impact of the desegregation order been on the schools, on the city, on students? What has the effect of student assignment for the purpose of achieving racial balance, in other words, court ordered busing, been on the students, the schools and the community? What do the numbers tell us with respect to test scores, graduation rates, truancy rates, population movements, et cetera? What unintended consequences, if any, have resulted from the desegregation order? And finally, how do the parents, the teachers, and the board members, feel about the order?

The overriding purpose today is to learn from Cleveland's experience and apply these lessons in the future, both here and in the rest of the country.

The other broad area of inquiry that will be explored at a future hearing in Washington is the unprecedented authority which has been assumed by the Federal courts to shape remedies in equity with respect to school desegregation. This authority is derived from article III, sections 1 and 2 of the Constitution, which extend the judicial power of the United States to all cases in law and equity arising under the Constitution. The Supreme Court's willingness to allow the extraordinary expansion of the article III power to the district courts with respect to desegregation cases was clearly motivated by both the worthy desire to eradicate segregation, as well as by the obvious failure of local, State and the Federal legislature to themselves acknowledge and eradicate the wrong. In fact, it was the state that often caused the wrong. The result of which has been to turn our fundamental understanding of separation of powers on its head and has brought Federal courts into the day-to-day management of local institutions and the implementation of local policies. I am certain that the Framers never envisioned such a role for the Federal judiciary. That these are functions beyond the administrative competence of the Federal judiciary ought to be obvious and a matter of common sense. However, the more significant question for this subcommittee is whether these are functions that lie beyond the legal competence of the Federal courts pursuant to article III. The thorough, tough and exhaustive examination of that issue is of profound significance to this committee, not only because the Federal courts have taken over the administration of local public school systems, but because they have also taken over the day-to-day management of some prisons as well as certain executive branch agencies. This question goes to the most basic and fundamental issue of separation of powers and how our Government was meant to function. And it begs to know which branch of the Government is best equipped and most competent to discern and define policy and implement the programs that flow therefrom.

Typically, these are matters that have been balanced between the legislative and executive branches; yet, with respect to school desegregation, the Federal courts have not only been responsible for the legal finding of a constitutionally violative pattern of racial segregation, they have also vastly expanded their inherent equitable powers to seize control of the schools—stripping State and local governments of one of their most important governmental responsibilities.

The importance of the success of our public schools cannot be overestimated and overstated. Sitting in the balance is the education of the next generation of American citizens, and in the most real and profound sense, the future of this Nation. If we cannot do a better job of making the situation better—and by that I mean black/white relations; if we cannot do a better job of providing every child in the city of Cleveland a better education—and by that I mean a graduation rate that is substantially higher than 49 percent, and a daily truancy rate that is substantially lower than 25 percent; if we cannot do a better job of figuring out how to reclaim and renew and restore our largest and oldest cities—and by that I mean stopping the exodus of the middle class, fixing the brownfield/greenfield problem so that job creating industries will want to locate in our cities, and restoring peace and security to our neighborhoods, then we are condemning our children in these cities.

Remember, these children are the ones who are most at risk in our society. Seventy percent of all of the children in the Cleveland public schools are at or below the poverty level. They are the ones who, more than anyone else in our society, need the high quality education that will allow them to improve their lot in life. We are condemning them to an ever-intensifying polarization and stratification of haves and have-nots, which ultimately neither this Nation nor any nation can endure. In the final analysis, the spiritual corrosion which results from that kind of institutionalized hopelessness and despair eats away at the moral fabric of our entire society.

One final thought. Some have suggested that this hearing should never have been held, not here, not now, not ever, that the issue of court-ordered busing is too explosive, and besides it has already been resolved. Yet, this is an issue that the editorial page of the Cleveland Plain Dealer has regularly brought up, raising most of the same concerns we will hear today and actually calling for an end to court ordered busing earlier this year. Many African-American community leaders have also spoken out against the desegregation order, calling it a failed experiment albeit one based on good intentions.

Could someone please explain to me why it is OK for the daily paper and other community leaders to question the wisdom of mandatory busing, but when an elected Member of Congress, who serves on a committee which can actually do something about it announces hearings on the issue, his motives are questioned in the most vulgar way. I think it is a sad commentary on modern American politics when so many of those in positions of leadership use their power to stifle debate instead of to encourage it. I have great confidence in the good faith and the ability of Clevelanders to sift

through the testimony we will hear today and draw conclusions in a fair and honest manner. We need more conversations like this, not less, because the more we talk and the more we listen, the more we discover how fundamentally alike we are and that what we really care about is seeing that our children receive the very best education that we can possibly give them. And when we understand how that unites us, then the distrust and the fear begin to melt away like the ice on Lake Erie in the spring.

Ultimately, the challenge that faces this subcommittee and any group of responsible men and women of good will who care about education is to do the extraordinarily hard work of devising solutions which guarantee equality of public educational opportunities, to eliminate State created segregation without at the same time causing a host of unintended negative consequences, and to encourage a colorblindness, which through moral authority will result in greater racial integration and harmony—the goal for which we are all striving.

My hope is that this hearing will bring us one step closer to that goal. Thank you, Mr. Chairman.

Mr. CANADY. Thank you, Mr. Hoke.

I also want to thank the gentleman from Illinois, Mr. Flanagan, for taking time out of his schedule to be with us here today for this hearing of the subcommittee. Mr. Flanagan.

Mr. FLANAGAN. Thank you, Mr. Chairman. I will not take the entire 5 minutes.

I would like to say that I am very happy to be here. This is a very important issue. Chicago, where I am from, is going through its final pass at desegregation which did not take the form of busing, but which took the form of scattered site housing under a consent decree involving the court system and local authorities.

We are here today in our proper role in Congress. The Cleveland Plain Dealer, reading its editorial that Mr. Hoke referred to, said the most incredible thing. It said this is an important issue, this is something we ought to fix, but we really should not talk about it, we really should not come here and have hearings. I could not believe it when I read it, it is unbelievable. All I could think of as I read it was that pure partisan politics was at work. I was appalled and embarrassed for them.

I will tell you that this is our proper role. We are here to do this, this is our job. As Mr. Canady discussed and as Mr. Hoke touched upon, the article III powers of the judiciary have so expanded in their own right because of the lack of congressional action because the elected representatives in Washington refused to address a very hard issue with hearings, with action, at least with some out loud discussion, if not a law. Consequently, the courts had to step in and solve really egregious problems at local levels.

Again, we are faced with it today. You have a panel of three Republicans. Where is the former majority? The comments that I read from them in the paper were that they did not want to come here and help Martin Hoke. I do not know how we are helping Martin Hoke by being here, I think we have to address this issue. This is so important and we have got to spend the time and the energy to do it.

The elected powers have to refocus on their constitutional duties, get out of businesses that they are in now, businesses they should not be in, businesses that States and local governments have the powers to do, and get back into the business of protecting the Constitution, executing its goals, executing its motives, and that is the proper role of the Federal legislature. The Federal judiciary has long been relegated to having to perform that function for us because we have lacked the political spine to do it. Well, we are here today to do that, and if the Cleveland Plain Dealer does not want us here, I am sorry for that, but this is where we belong, this is the right thing to do and I am extremely pleased to be part of this.

Mr. CANADY. Thank you, Mr. Flanagan.

We are going to soon go to our first panel and then to the subsequent panels of witnesses. But before we do that, I would like to recognize State Representative Ron Mottl. Representative Mottl had come to the hearing today, hoping to make comments during the open mic session which will follow our panels of witnesses, but his schedule requires him to move on. He has requested that he go out of order, so I would like to recognize State Representative Ron Mottl for some comments. If you would please limit your comments to no more than 3 minutes.

STATEMENT OF RON MOTTL, A STATE REPRESENTATIVE IN THE OHIO STATE LEGISLATURE

Mr. MOTTL. Thank you.

Thank you very much, Mr. Chairman, members of the subcommittee. I am a proud Democrat and I am here to participate in these important hearings. You people are to be commended for being here. As you stated before, Mr. Chairman, members of the subcommittee, this judicial activism that has been going on by the courts—and we can blame the courts but as has been aptly said by Mr. Flanagan, the legislature or the Congress of the United States has to share some blame in not doing something about forced busing.

I grew up in Cleveland for a large portion of my life. I went through elementary school at Rickoff, Barkwell and Mound, and Myron T. Herrick Junior High School before I moved out to Parma. I then went to Parma High School. I got a good education in the Cleveland school system. But today, the city of Cleveland school system is probably one of the worst in the country. And this bothers me and it bothers every Greater Clevelander, that we do have one of the worst school systems. The civic leaders and the elected officials in Greater Cleveland are working so hard to create a new image for Cleveland, we have Gateway going for us, the new Rock and Roll Hall of Fame, the Cleveland Indians, we are building all over town and we are all happy about that. But it seems that the elected officials and the civic leaders want to bury their heads in the sand when it comes to having a good school system. We cannot be the best location in the Nation unless we have a good viable school system in the city of Cleveland.

Court-ordered busing for 22 years has made it impossible for the city of Cleveland to have a good viable school system. It is about time we put an end to court-ordered busing in the United States and also here, as a remedy for desegregation. All of us believe that

a school system should not be segregated. But what means should we use to desegregate? It should not be court-ordered busing. Let us look at it historically. James Coleman, the noted professor from the University of Chicago, was a prime architect of court-ordered busing. He examined 500 desegregation cases after court-ordered busing became fashioned at his suggestion. That is from Boston to L.A., from Chicago to New Orleans. He found out after examining those 500 desegregation cases that all court-ordered busing led to was white flight and a substantial sum of money that was expended, and the end did not achieve the goal that was supposed to be achieved that was the desegregation of the school system.

In Cleveland, all we have now on the bus are the poor whites and the poor blacks. Those people that could afford to go to private or parochial schools or move to the suburbs, have done so. It is only the unfortunate, the poverty people, the people that are in the low income class, white and black, that are on the schoolbus. That is tragic and that to me is discrimination.

What I am suggesting to the subcommittee is that you people can, I think today, do something about forced busing. I had a constitutional amendment through a discharge petition on the House floor in 1979 to the dismay of the Speaker O'Neill at that time. We only had 209 votes at that time and we needed two-thirds.

But I think today the climate has changed. The Supreme Court of the United States has become much more conservative. They are not allowing as much judicial activism to take place as we have seen in the past. I think even a statute or bill introduced that would limit court-ordered busing would be upheld by the Supreme Court of the United States. It would be best to have it in the Constitution but that is a long process and a difficult process. I think if you fashion a bill that would allow the child to attend his neighborhood school, it would very well today be upheld by the Federal judiciary, especially the Supreme Court of the United States.

We have seen in Cleveland over $700 million expended for court-ordered busing. Just imagine if we could have used those funds more meaningfully. We could have the highest paid teachers in the world in Cleveland, we could have the best textbooks, the best educational facilities, and truly we could have made this the best location in the Nation by having a great school system. Instead, that money went down the drain. We have chased a lot of white people out of Cleveland unfortunately.

Consequently, what I am saying to you, let us put an end to this remedy once and for all. Court-ordered busing might have been a noble experiment 25–30 years ago, but it has been a real failure, and Cleveland is a living example of how it has failed us.

Judge Battisti was a fine gentleman, but he did not use any common sense as a Federal district judge in imposing this remedy. Hopefully Judge Krupansky has a little more common sense and will put an end to it. But if not, let the Congress of the United States act finally and let us do something about it. Let the local people through their own school board, elected school board, decide what is best for the city of Cleveland.

Thank you very much, Mr. Chairman.

[Applause.]

Mr. CANADY. Thank you, Representative Mottl.

Our first witness today is Mr. Daniel McMullen. Mr. McMullen is the court-appointed special master in the Cleveland public school desegregation case of *Reed* v. *Rhodes*. If you would come forward, Mr. McMullen. I want to thank you for being with us today. We appreciate the perspective that you will give on this case. Thank you very much.

If you and all the other witnesses would please limit your remarks to no more than 5 minutes, we will be pleased to, without objection, place your entire written statement in the record.

STATEMENT OF DANIEL McMULLEN, COURT-APPOINTED SPECIAL MASTER IN REED v. RHODES

Mr. McMullen. Thank you, Mr. Chairman, Judiciary Committee members, counsel.

My name is Daniel McMullen, I am an attorney practicing intellectual property law with the law firm of Calfee, Halter & Griswold here in Cleveland, OH. Prior to my current position, I had been a trial attorney for the U.S. Department of Justice and in private law practice, before serving for approximately 5½ years as the U.S. district court's monitor and later mediator in *Reed* v. *Rhodes,* the Cleveland school desegregation lawsuit. After having left that position, I was asked earlier this year by Senior Judge Robert Krupansky, to serve as a special master in the case.

I was invited to appear today by Judiciary Committee Chairman Henry Hyde and Representative Hoke, and was also asked to appear by representatives of Congressman Louis Stokes. I appear today with the Court's knowledge, for the purpose of explaining some of the procedural history of Cleveland's school desegregation case. Because of my obligations in my role as special master in the case, I must respectfully decline to share my personal opinions on the merits of judgments and actions passed or presently under consideration. I also appear today as a member of this community in the hopes of contributing to a civil, honest and serious discourse on subjects like education, race, the well-being of our children, that have too often in the past in this community been exploited shamelessly for perceived political advantage, to the community's great detriment.

The procedural history that I recite, resides for the most part in the docketed record of *Reed* v. *Rhodes,* which includes numerous published opinions from the U.S. district court and court of appeals, as I am sure you are all aware.

As should be well known to all here present and as the chairman acknowledged, in 1954, the Supreme Court of the United States issued its unanimous landmark decision in *Brown* v. *Board of Education of Topeka,* thereby declaring an end to nearly a century of State-sponsored segregation in thousands of America's public schools. The Court wrote, quote, "In the field of public education, the doctrine of separate but equal has no place. Separate educational facilities are inherently unequal." In a companion opinion issued a year later, the Court instructed public school officials across America to desegregate, quote, "with all deliberate speed."

Nearly 20 years later, in 1973, *Reed* v. *Rhodes,* the Cleveland school desegregation case was filed as a class action on behalf of a class of all black students in the Cleveland public schools and

their parents, who alleged that State and local school officials had intentionally segregated black students in the Cleveland public schools, and thereby violated the U.S. Constitution. The voluminous record developed at trial disclosed that from the 1940's through the 1970's, Cleveland public schools became increasingly and distinctly segregated by race in the student populations of schools. By way of illustration, in 1975, 2 years after *Reed* v. *Rhodes* was filed, 119 of 175 schools in the Cleveland school district were 99 percent or more one race by student population. This segregation was found not to be adventitious, but the result of intentional conduct of school officials undertaken in combination with other factors, including markedly segregated housing patterns and the actions of other public agencies. Intentionally segregative practices of school officials were found to have included racially segregative assignment of faculty, the siting of new school facilities, attendance zone boundary changes, special transfers, optional attendance zones, use of portable classrooms, cooperation in the construction of segregated housing and, as Congressman Hoke noted, busing.

In affirming without dissent, the district court's finding of liability, the U.S. Court of Appeals for the Sixth Circuit wrote, quote, "With such massive evidence of intentional discrimination as we have found, we now hold that the racially segregated school assignment system was not adventitious or due to neutral causes, but was on the contrary intentional. From the record taken as a whole, it appears clear to us that the district judge was wholly warranted in finding that the Cleveland schools were segregated by race and that the Cleveland Board of Education had a duty to desegregate that system, which it completely failed to perform. Further, we hold that the record disclosed, as the district judge found, intentional practices of a systemwide nature, which required his finding that defendants' intentional discriminatory action has infected every part of the system, mandating the finding that defendants have operated a de jure segregated school system in Cleveland."

A petition for certiorari to the Supreme Court was denied. Following the finding of liability, the Court established planning guidelines for development of a remedy. Extensive hearings were held and input was solicited from local school officials, State school officials, plaintiffs, the U.S. Department of Justice, court-appointed experts and a special master—a different special master.

The Court's remedial order adopted in February 1978 contained elements addressed to reading, guidance and counseling, training in human relations, magnet schools, extracurricular activities, safety and security, management and financial considerations and the role of thc State, in addition to student assignments and attendant transportation. Like the liability finding, the remedy was also upheld on appeal by the sixth circuit and cert was denied by the Supreme Court.

With regard to student assignments, which I understand to be the subject of primary interest to the subcommittee in this hearing, the Court ordered that the racial composition of the student population in each school not substantially deviate from that of the district as a whole. Based on the recommendation of state school officials, a reasonable deviation was later held to be within 15 percent-

age points of the black student population of the district as a whole, which was about 64 percent black at that time.

These rulings, of course, followed a series of Supreme Court decisions in cases like *Green, Swann* and *Keyes,* which approved the use of such remedial methods by district courts.

Cleveland's court-ordered assignment plan matched attendance areas on the predominantly black east side of Cleveland with other areas on the predominantly white west side, into what were called clusters. A typical student might be assigned for the primary grades; that is, kindergarten through third grade, to a school close to home; for the elementary grades, four through six, to a school in the paired area; then on to junior high school and high school according to the particular so-called feeder pattern.

Transportation was provided, as required under Ohio law, to students living more than a specified distance from their school. The early years of court-ordered student assignments and attendant transportation in Cleveland were initially implemented in 1979 through 1981 and were plagued by poor planning and worse execution, which resulted in late buses, mechanical breakdowns, unqualified drivers and children being left standing on street corners. Following contempt proceedings before the Court in the mid-1980's, operations of the school district's transportation system improved dramatically.

Notwithstanding transportation problems, student populations in Cleveland public schools became dramatically more integrated than they had been. Throughout the 1980's and into the early 1990's, student populations in Cleveland public schools were within the prescribed racial parameters, with the exception of about 10 schools per year.

Beginning in the early 1990's, in response to changing circumstances and acknowledged community dissatisfaction with various student assignment practices, the parties to the lawsuit—and when I say parties, I mean the plaintiff class of all black students and their parents as represented by class representatives and counsel, local school officials and State school officials—those parties have undertaken a series of reexaminations and modifications of student assignment practices.

As director of the monitoring office, I had previously recommended that such an effort be made on a cooperative, negotiated basis, focused on serving the best interests of Cleveland students. And if you have an interest in the legal reasoning underlying that recommendation, I would be happy to refer you to the law review article Irene Herroda-McMullen and I authored, entitled "Stubborn Facts of History," it is found at 44 Case Western Reserve Law Review 75.

In endorsing such an approach, U.S. District Judge Frank Battisti observed in a statement from the bench to the parties in March 1992 that, quote, "It is not the court, but you who attend and operate the schools, who must find and follow the best course." Thus, in the summer of 1992, the district court approved school officials' proposals to exempt from the assignment mechanism a group of elementary schools located in relatively integrated residential areas. In 1993 and 1994, at the Court's direction, I mediated the parties' negotiation of an interim agreement and then a

comprehensive settlement agreement intended to move the case to, in the Court's phrase, "its just and orderly resolution."

In addition to a set of educational initiatives, collectively called Vision 21, a commitment of substantial resources from the State of Ohio and a schedule for concluding the litigation, the settlement agreement contained stipulations that student assignment duties had been met in large part, and provisions for elementary school students and their parents to enjoy significantly greater choice in their schools of assignment and significantly increased range of magnet school options for all students. The agreement also relaxed slightly the provisions maintaining so-called racial balance in schools, and I would note in passing in that regard that as recently as 1992, in *Freeman* v. *Pitts,* a case which I believe informed the parties discussions, the Supreme Court majority had characterized racial imbalance as fundamental in determining compliance with a desegregation decree. It is also noteworthy with regard to that settlement agreement that African-American parents representing the plaintiff class, the Cleveland Board of Education and superintendent, the local chapter of the NAACP, the State board of education and superintendent of public instruction, representatives of the Cleveland teachers' union, the Cleveland Initiative for Education, a prominent business community organization, the Greater Cleveland Round Table, the leadership of Ohio's General Assembly, the city of Cleveland, Mayor White and Governor Voinovich, all, in word and deed, expressed support for that settlement agreement.

This past spring, the parties further modified their agreement regarding student assignments for the current school year. Their latest agreement adopted the recommendation of former Ohio State superintendent and Bush administration Education Department, Deputy Secretary, Ted Sanders, fundamentally altering the prior cluster arrangement as a mechanism for assigning students to one based on student and parent choice across the district and at all grade levels, and dramatically relaxing requirements regarding the racial composition of student populations in schools. The district court approved that agreement with minor modifications in May of this year.

In sum, the recent history of student assignments in Cleveland public schools is one of the parties to the school desegregation lawsuit negotiating a succession of agreements approved by the Court to effect change that affords students and parents markedly greater choice in school of assignment than they have ever previously exercised, moving away from court-mandated racial balance requirements and allowing individual students and parents to determine what factors are important to them in the schools they wish to attend.

Thank you, Mr. Chairman.

Mr. CANADY. Thank you for your comments.

Let me ask a brief question and I understand you are in the position of special master and I understand your responses are affected by the fact that you are wearing that hat. Why is it that there was the change to a system of allowing greater choice? What was the motivating factor for that?

Mr. MCMULLEN. I am not sure that anyone can give you a completely comprehensive answer to that question, it is a function of

a lot of different factors. I think there was a widespread recognition throughout the community that the practices that had been employed over the last 12 to 15 years in connection with this lawsuit could be and therefore needed to be improved upon, significantly with regard to how students were assigned to schools. I believe the parties to the lawsuit recognized that, I believe that the Court recognized that. I believe that for a period of time there, there was a shared recognition that we could do better than we had been doing, and the sense of obligation, given what was at stake, the well-being of our children, to do better than we had been doing as a community on these subjects motivated the activity that went forward. I think in particular, there was a recognition that the best interests of our students had to be our highest order consideration, not that it had not been previously, but I think circumstances had changed and people's sensitivities to the needs of Cleveland public school students had evolved to the point that there was a shared recognition that we could do better.

Mr. CANADY. Are you aware of any studies that have been done to determine the impact of the Court's orders on student achievement in the public school system? And I realize those studies are very difficult to undertake because there are so many different variables that can affect student achievement. But in your work on this case, are you familiar with any such studies?

Mr. MCMULLEN. The monitoring office has, among other sources, over time documented in considerable detail various measures of student performance. The school districts, the State of Ohio collects such data as well. Attempting to define a causal relationship between those measures of student performance and any individual factor is difficult to say the least, as I am sure the chairman is well aware.

I would also say that——

Mr. CANADY. Let me ask you this——

Mr. MCMULLEN. Yes, sir.

Mr. CANADY [continuing]. Putting aside the causal relationships—and I understand that they are difficult to sort out—what has been the experience with levels of student achievement? How does student achievement in the system today compare to student achievement in the system at the time the Court order was first instituted?

Mr. MCMULLEN. Well, I would say with regard to student achievement today that I know of no one in Cleveland, OH, who considers it anything approaching satisfactory.

Mr. CANADY. But do you know how it compares with student achievement when the Court order was first instituted?

Mr. MCMULLEN. In a word, Mr. Chairman, no, and I am not sure that anyone else does either. I am not sure that there are meaningful methods for us to make meaningful comparisons across that historical period. The student population who attended Cleveland schools in the 1950's and 1960's, for example, up to the 1970's, was a different population than resides here today. Socioeconomic factors were different, the local economy was different. Many, many things in our community obviously are far different today than they were at the time. Measures of student academic performance are different today than existed in the 1950's, 1960's and 1970's.

I know that there is a prevailing view and belief that it is dramatically worse; that is, that student performance is worse. But with respect to your question as to whether that has been documented in a reliable way, I cannot say that it has, Mr. Chairman. I have pondered that, we have attempted to get a handle on it. To do so in a really meaningful, statistically reliable way that a good social scientist should do such things, I am not sure that has been done.

Mr. CANADY. Has information on that subject been submitted to the Court in the course of its considerations?

Mr. MCMULLEN. Oh, absolutely, yes, voluminous information on student academic performance.

Mr. CANADY. Are you familiar with the information that has been submitted to the Court?

Mr. MCMULLEN. I am, Mr. Chairman.

Mr. CANADY. We do not have much time here, but could you briefly summarize what that information shows?

Mr. MCMULLEN. I do not know if you have a copy of a series of documents that the monitoring office had submitted to the Court, which undertake, among other things, to document academic performance disaggregated in a number of different ways over time by race, by various other characteristics and factors.

Mr. CANADY. Could you briefly summarize what that data shows? If you cannot, you cannot.

Mr. MCMULLEN. Academic performance is not satisfactory in Cleveland public schools.

Mr. CANADY. But you do not have any—you do not have a view as to how it compares with academic performance in the past? And I understand there are all these variables, but we have got a school system, you could make a generalization about student achievement in that school system when the court order went into effect, you can make a generalization about student achievement in that system today. And I am just trying to get a comparison.

Mr. MCMULLEN. I am not sure that I would undertake to say much beyond there is little evidence that it has improved. I cannot say that it is dramatically worse.

I would also add that we, in the course of gathering that information and reporting it to the Court, have also discovered one or two things that were sort of surprising and counterintuitive. Among the factors that many people, including among others the Cleveland school superintendent, Richard Boyd, have prominently pointed to as predictors of academic success is attendance at school. And obviously we can all appreciate why that is such a critical factor to student performance. Over time, consistently, for the entire period that I served in my capacity as monitor, we discovered that students who ride to school on a schoolbus attend more frequently than those who do not. We discovered that students who ride to school on a schoolbus are promoted to the next grade at higher rates than those who do not. We discovered that in most years dropouts among students who ride to school on a schoolbus were lower than those who do not. Participation in extracurricular activities in many years has been higher among those who ride to school on a schoolbus than those who do not.

I do not know what those things mean exactly, but they suggest that it is—this matter of the impact of court jurisdiction pursuant to a lawsuit of this sort on the school system and in particular the academic performance of students is, at a minimum, very complicated.

Mr. CANADY. Thank you, Mr. McMullen.

Mr. Hoke.

Mr. HOKE. Thank you.

You have obviously had the opportunity to look at this over a long period of time and you have been intimately involved with it as much probably as anybody—probably anybody who is involved in this situation. And you are aware of unintended consequences, you are aware of the sort of ancillary effects that have happened, whether or not you can draw a direct causality, to what extent you can, to what extent you cannot. The Supreme Court has said and we all know at a very gut level of conscience that it is wrong to segregate schools by State intent, or to cause that with the State making that happen. The Supreme Court has also said recently that segregated schools per se are not unconstitutional, if people choose without any coercion and without any State coercion, whether it is overt or covert or in any way whatsoever, if housing patterns go a certain way, that that is not per se unconstitutional. But we know that that is not the situation here in Cleveland and we know that the school system is not in a situation today that we are proud of, that we would like to see, that we feel good about having for our children. It creates problems for the city of Cleveland, it creates problems in terms of drawing industry, in terms of all kinds of ripple effects. And yet we know also that as a matter of law, we were required correctly to integrate these schools. We also have a sense that at the time, in the mid-1970's, for whatever reasons, legislatures were absolutely unwilling or unable—and when I say legislatures, I also mean the Cleveland School Board, because that was the direct finding of liability—they were absolutely unwilling, unable, or lacked the courage to do what was right to make the changes. And we have seen as a result that the Federal court has become involved in the day-to-day management of this school system and a thousand school systems across the country.

When you look back on this—and I would ask you to not talk about the Cleveland situation, but in an idealized situation, what models could be used to approach a more responsive remedy to desegregation, and to what extent do you think that the emphasis should be—how do you balance the importance of emphasizing quality educational opportunity against integration itself as the goal? I will let you chew on that.

Mr. MCMULLEN. If your question, Congressman, goes to what is a better way to go about this than perhaps the method that evolved out of the courts, I have come to believe that local communities must be responsible for, collectively responsible, for how they resolve these issues and that requires a lot of things of people in local communities to come to grips with, honestly and openly communicating with one another. A belief that those local communities are in the best position to help to find resolutions to these difficult problems was what motivated the recommendation I alluded to previously to the Court and to the parties, that in Cleveland's case,

that they should undertake—the parties should undertake—to negotiate a resolution of this litigation on terms that had been filtered through the communities represented. In Cleveland's case, it is a class action lawsuit, each of the parties to the case represents a significant constituency in our community. Local school officials of course nominally represent all of the residents of the school districts. State school officials nominally represent all of the citizens of the State of Ohio. The plaintiff class of all black students in the Cleveland public schools numbers on the order of 50,000 students and an equal or greater number of parents. Those represent very large segments of our community. It had been, was and remains my belief that those parties are collectively the entities most able to reflect the legitimate interests of the segments of the community that they represent and with an understanding of their basic minimum constitutional obligations should be encouraged to find the best path. Again, echoing the statement that I quoted from Judge Battisti from the bench in 1992. I believe that the Court had come to hold that view and directly encouraged the parties here to undertake such an effort.

Mr. HOKE. I am going to hold any more questions on that. Thank you.

Mr. CANADY. Mr. Flanagan.

Mr. FLANAGAN. Thank you, Mr. Chairman.

Welcome, Mr. McMullen.

Mr. MCMULLEN. Thank you.

Mr. FLANAGAN. I have nuts and bolts questions of how busing works, and you are the guy who can tell us. Understanding that the segregated nature of the schools years ago before the consent decree was entered into, before the suit was filed, was at best heinous and needed to be repaired, and thus prompted judicial intervention. But for the lack of local elected officials, State elected officials, Federal elected officials to do anything about it, the Federal judiciary acted. I really bring that up because of your allusion to Mr. Hoke's question that the local entities are best able to do this; yes, in theory that is true, and one would hope that they would want to do it, but history has demonstrated that unless prodded or driven to it, they have not acted.

My only issue with the busing question is that the judiciary involved itself. The judiciary is apart, above if you will, they tend to wander above the fray and offer absolute truth that must be effectuated; now you go figure out and get it done. More properly the legislative bodies should attack a problem in a practical sense, reflecting community needs. This is the problem, I believe at the very crux of busing, is that a pie in the sky, almost unrealistic, plan by the courts to cure the problem in toto rather than a practical solution that is workable for all members of the community. Consequently, I ask you under the new plan for this school year, how many parents received their first assignment last year—first choice in assignments last year?

Mr. MCMULLEN. We do not yet have I think definitive numbers on that. The Cleveland school superintendent reported in an editorial piece that was published in the Plain Dealer this past week that all but about 600 Cleveland students had received assignment to a school that they chose. Now I do not know whether that is ex-

actly an accurate statistic or not. I mention it in that that was what had been published under his name.

Mr. HOKE. It is also a question of first choice or second choice.

Mr. MCMULLEN. Sure, and the short answer to your very narrow question is I do not think that that data has yet been disaggregated, although I share your interest in it and look forward to getting it when it is available. There is a mechanism in the State of Ohio for counting enrollments and doing other things that is undertaken in the first week of October of each year, and that set of data is sort of the official data for matters like attendance, et cetera, and so it will be from that body of data that I suspect the specific question you posed may be answered.

Mr. FLANAGAN. Perhaps in that light then, maybe you can give us the numbers for the previous year, ballpark numbers, will suffice.

Mr. MCMULLEN. I do not.

Mr. FLANAGAN. Nearest thousand?

Mr. MCMULLEN. Well, I am not sure that that is a question that anyone has specifically undertaken to answer previously, although it is a more meaningful question today than it was 5 years ago. I would guess that if you count the numbers—well, it is a very complicated question given the way the mechanism here in Cleveland works.

Mr. FLANAGAN. Perhaps you can expand on that.

Mr. MCMULLEN. Well, sure. To briefly describe the process, applications go out to students sometime in the spring of the year. Those applications list schools that students may elect or request assignment to. And the way the mechanism is operated, at least one of those schools on that application is the so-called guaranteed assignment. So that if the application is not returned, that is the default value.

Annually, very large numbers of applications are not returned, for reasons that I am not sure anybody knows fully. So in the past year, that number was a very, very large fraction of the total student population of the school district. If that thereby reflects those students getting the school that they wanted to go to, then it is a pretty substantial fraction of the total student population, probably well over half. I do not know whether that is a most accurate construction of what it means when the application is not returned.

In addition to that, substantial numbers of Cleveland students, on the order of 8,000 to 10,000 I would guess, maybe 12,000 in the current year, attend magnet school programs, which they have specifically requested to attend. One does not get assigned to such a program without such a request. Presumably, one would also characterize those students as attending a school that they had requested.

There are substantial numbers of students who were assigned to schools previously, in previous years, and again, the best data that I would refer to for the current year is the number that I mentioned from the superintendent's editorial page piece. In previous years, substantial numbers of students have been assigned to schools that they may not have chosen. And the agreement—there is a set of agreements, but in particular the most recent agreement of the parties in this lawsuit is intended, among other things, to

maximize the opportunity for students and their parents assisting them, to be assigned to a school that they have asked to go to.

Now let me add one other thing. In my capacity, acting on the court's behalf as a special master, my primary responsibility is in connection with the legal resolution of these issues. I am not adequately informed about all the detailed mechanics of how the student assignment process operates. There are people here obviously who are much more knowledgeable than I about that.

Mr. FLANAGAN. I do not ask the question to embarrass you or to intimate that you are responsible for these things, but I do ask the question to point out the fact that the overarching goal of the court decision is not to maximize the educational value for children so that they can be as smart as they can be or to maximize the value of the parents' desires for their children, but some overarching goals, some pie-in-the-sky scheme that does not have the legislative input that anyone would expect at this level to accomplish those far more important goals. As important as racial unity and desegregation generally across the lines in harmony in any community is, if you are not producing children with an education that is of a quality nature and you are harming one goal to accomplish the other—and many of the statistics I have seen have demonstrated that that may be so—I would tell you that because the Court does not hold that as a priority the effectuation of parents' wishes how many children are moving from here to there, there to here and why, and how educational goals are being affected, I would tell you that we have not approached this terrible problem in a way that is going to get us to a solution that is both equitable and effective.

Mr. MCMULLEN. Congressman, if I could just add——

Mr. CANADY. We are going to have to go to the next panel. If you could conclude in about a minute.

Mr. MCMULLEN. Yes, sir, Mr. Chairman.

I was just going to say that I think in light of your comments, Congressman, I think you will be happy to know that the view that you articulate, that improving the educational performance of our children is the highest order value, is one that is shared by the vast majority of Clevelanders, participants in the litigation and otherwise, the Court included. I would say that to whatever extent your characterization about pie-in-the-sky goals may have been true at any point in the past, I think you will be further pleased to know that I think that is not the case today, and it is reflected in again the sequence of agreements that the parties here have undertaken to negotiate, intended to address precisely the points that you raised, and thus I would hope that were the Congressman to return to the north coast of America 5 years hence, you might be able to observe some of the hoped for consequences that will evolve—we hope will evolve—from affording a greater choice and latitude to students and parents to maximize their educational opportunity and the results of those educational opportunities.

Mr. FLANAGAN. That reordering of the priorities is indeed encouraging and I will look forward to that.

Mr. CANADY. Mr. McMullen, we appreciate your testimony. It has been very helpful to us.

I would like to now ask that the two members of the second panel come forward as Mr. McMullen is leaving. If the two of you

will come forward and take your seats, I will introduce both of you and then recognize you in turn.

The first witness for our second panel is Dr. Thomas Bier. Dr. Bier is director of the housing policy research program at Maxine Goodman Levin College of Urban Affairs located at Cleveland State University. He has studied the reasons behind Cleveland's population shift from urban areas to the suburbs.

Our next witness is Louis Erste. Mr. Erste presently serves as senior advisor to the office of the superintendent for Cleveland's public school system. He is also a fellow at the Citizens League Research Institute where he has directed major studies of public opinion in public schools, race relations and government spending.

We thank both of you for being here today. Mr. Bier.

STATEMENT OF THOMAS BIER, PH.D., DIRECTOR, HOUSING POLICY RESEARCH PROGRAM, CLEVELAND STATE UNIVERSITY

Dr. BIER. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to speak with you this morning.

As you say, I am director of the housing policy research program at Cleveland State University, it is a position I have held for 13 years. And in this position I have studied and I document housing market activity in the city of Cleveland, in the suburbs, in the county and indeed the entire region. And in my studies, I have analyzed the sales activity of homes and the movement of home buyers and home sellers.

I should note that although at no point in my work have I explicitly examined a possible relationship between Cleveland's housing market and court-ordered busing, I have, however, over the course of my work garnered some facts and drawn some conclusions based on those facts.

And for that reason, I believe busing for the purpose of racial balance has hurt the city of Cleveland because it has contributed to the economic and social weakening of its resident population, and it has done it by pushing people to move out of the city to suburbs, many of whom have been the kind of residents that every community needs, people with good incomes and who value education.

To be objective about this, however, I should note busing has not been the only factor that has undermined the city of Cleveland. By 1977 when the announcement was made that court-ordered busing would occur, Cleveland already was losing population. Indeed, in the 1970's, the city's population fell by 24 percent, which was one of the largest major city losses in the country. And most of that lost I think—I am sure—occurred before 1977. But busing made it worse. It made it worse because it pushed people to move who otherwise would not have moved. And it has done it since.

I think the remedial solution of mandatory busing did not take into account the fact that there is no iron curtain between Cleveland and its surrounding suburbs and that in those suburbs there are tens of thousands of homes and apartments that are easily affordable to tens of thousands of Cleveland residents. The jurisdictional boundary between the city and the suburbs is a massive

open door and through that door annually a steady stream of parents who did not want their children bused, has moved out.

I believe that about half of the 100,000 households that have left Cleveland since 1977 did so, at least in part, because of busing. And I base that conclusion on home sales figures and surveys of home sellers and buyers.

From those instruments, we know how many people move into and out of Cleveland, and actually twice as many move out as move in. Of those who sell a home, 90 percent leave the city. And of those moving out, 50 percent have school-aged or preschool children at home. Only 8 percent of those movers had their children in public schools before the move, 25 percent were using parochial schools, another 5 percent were using private or other schools. But in the suburbs, once they have moved, 30 percent used public schools. In other words, the big shift in moving is from city parochial schools to suburban public schools. What that means is that because of busing, most of the users of Cleveland's public schools have been families who could not afford another option, and the leavers of the city are the ones who can afford to move to a suburb, and they also had been able to afford an option other than Cleveland public schools. And so they would use, for example, parochial elementary schools up to the point when they need usually a public high school, and at that point, they to move. And usually it is because—if they are going to consider a parochial school—the expense is excessive for their budget.

Movers from Cleveland are from the city's highest income group. The median income in 1992, which was our most recent year of survey, was $42,000. That is over twice the city average. And thus, the city has progressively become poorer and busing has contributed to the increasing isolation and concentration of the city's poor, particularly minority population, which I would agree is the most maddening problem in our society today.

Fifty-four percent of those who move out of Cleveland now want a safer neighborhood. Concern for safety is the strongest reason for moving, it is stronger than schools right now. But I believe that busing has contributed to the growth in Cleveland's safety problem, by pushing stable families to leave the city and thereby weakening the social fabric that controls the behavior of youths in those neighborhoods.

Of all movers, including those without children, 65 percent express high dissatisfaction with the public schools. In second place, at 33 percent, there is high dissatisfaction with the condition of streets.

Any many movers from Cleveland who say they would not live in the city again, cite busing as a reason. Examples:

"Busing ruined the schools forcing respectable people out of the neighborhoods and lowering housing values." And I would add that that is indeed factual. The west side of Cleveland, the areas where rejection of busing has been most intense, has lost 50 percent more real estate value in the last 20 years than the east side.

Another quote, "I would not live in Cleveland again because of forced busing and because neighborhood values are decreasing."

Another quote, "Because of forced busing. Travel is broadening, but for the youngsters, it is a waste of time. All of our children and their kids moved because of busing."

Now those are home sellers moving out. Few people move into Cleveland with school-aged or preschool children. Actually, Cleveland does not do badly in the extent to which it is able to draw suburban young adults into the city as first-time home buyers, and that is because the city's housing is relatively affordable, it is attractive. But most move in without children. And when children come along and schools become a factor, that is when the parents forsake the city for the suburban public schools.

And so year after year, economic and social strength has been gradually but steadily drained from Cleveland to its suburbs. Busing has not been the only cause, but it has been a significant factor.

Busing needs to be considered not only in terms of its effect on the educational process, but in terms of its effect on the strength and stability of city neighborhoods. In my judgment, mandatory busing to achieve racial balance has contributed substantially to the weakening of the city of Cleveland.

But in closing, I want to make it clear that I am not suggesting that there were no discriminatory practices within the Cleveland public schools 20 years ago that warranted Federal intervention and remediation. And it may be that benefits within the schools resulting from busing vindicate its imposition, and I am not in a position to judge that. But I do maintain, however, that busing has had a substantial negative impact outside of the school walls, in the neighborhoods of the city.

Thank you very much.

Mr. CANADY. Thank you, Dr. Bier.

[Applause.]

[The prepared statement of Dr. Bier follows:]

PREPARED STATEMENT OF THOMAS BIER, PH.D., DIRECTOR, HOUSING POLICY RESEARCH PROGRAM, CLEVELAND STATE UNIVERSITY

My name is Thomas Bier. I am director of the Housing Policy Research Program at Cleveland State University, a position I have held for 13 years. In this position I have studied and documented housing market activity in the city of Cleveland, as well as Cuyahoga County and the surrounding region. My studies have included analyses of home sales and the movement of home buyers and sellers.

Although at no point in my work have I explicitly examined the relationship between Cleveland's housing market and court ordered busing, I have, however, over the course of my studies garnered some facts and drawn some conclusions based on those facts.

I believe busing for the purpose of racial balance has hurt the city of Cleveland because it has contributed to the economic and social weakening of its resident population. It has done that by pushing people to move out of the city to suburbs—many of whom have been the kind of residents that every community needs; people with good incomes and who value education.

To be objective about this, however, busing has not been the only factor that has undermined the city of Cleveland. By 1977 when the announcement was made that court-ordered busing would occur, Cleveland already was losing population. Indeed, in the 1970's the city's population fell by 24%, most of which I am sure occurred before 1977. But busing made it worse. Busing made it worse because it pushed people to move who otherwise would not have moved. And it has done it since.

The remedial solution of mandatory busing did not take into account the fact that there is no Iron Curtain between Cleveland and its surrounding suburbs, and that in those suburbs there are tens of thousands of homes and apartments that are easily affordable to tens of thousands of Cleveland residents. The jurisdictional bound-

ary between city and suburbs is a massive open door. Through that door, annually, a steady stream of parents who did not want their children bused has moved out.

I believe about half of the 100,000 households that have left Cleveland since 1977 did so at least in part because of busing. I base that conclusion on home sales figures and surveys of home sellers and buyers.

We know how many people move into and out of Cleveland (twice as many move out as move in). Ninety percent of all home sellers move out. Of those moving out:

50% have school-aged or pre-school children at home.

Only 8% had children in public schools before the move; 25% used parochial schools; 5% used private or other schools. But in the suburbs, 30% use public schools. In other words, the big shift in moving is from city parochial schools to suburban public schools. Because of busing, most of the users of Cleveland's public schools have been families who cannot afford another option.

Movers from Cleveland are from the city's highest income group (median income of movers in 1992, our most recent survey year, was $42,000)—thus the city has progressively gotten poorer. Busing has contributed to the increasing isolation and concentration of the city's poor, particularly minority, population—which I would agree is the most maddening problem in our society today.

54% of those who move out of Cleveland want a safer neighborhood. Concern for safety now is the strongest reason for moving—but I believe that busing has contributed to the growth in Cleveland's safety problem by pushing stable families to leave the city, thereby weakening the social fabric that controls the behavior of youths.

Of all movers, including those without children, 65% express high dissatisfaction with the public schools (followed in second place by "condition of streets" at 33%).

And many movers from Cleveland who say they would not live in the city again cite busing as a reason. Examples:

"Busing ruined the schools forcing respectable people out of the neighborhoods and lowering housing values." (The West Side of Cleveland, the area where rejection of busing has been most intense, has lost 50% more real estate value than the East Side.)

"[I would not live in Cleveland again because of] forced busing and [because] neighborhood values are decreasing."

"Because of forced busing. Travel is broadening, but for the youngsters it is a waste of time. All of our children and their kids moved because of busing."

Those are home sellers moving out. Few people move into Cleveland with school-aged or pre-school children. Actually Cleveland does not do badly in the extent to which it is able to draw suburban young adults into the city as first-time home buyers (the city's housing is relatively affordable). But most move in without children. When children come along and schools become a factor, that is when parents forsake the city for suburban public schools.

And so year after year, economic and social strength has been gradually but steadily drained from Cleveland to its suburbs. Busing has not been the only cause, but it has been a significant factor.

Busing needs to be considered not only in terms of its effect on the educational process, but in terms of its effect on the strength and stability of city neighborhoods. In my judgement, mandatory busing to achieve racial balance has contributed substantially to the weakening of the city of Cleveland.

Mr. CANADY. Mr. Erste.

STATEMENT OF LOUIS ERSTE, FELLOW, CITIZENS LEAGUE RESEARCH INSTITUTE

Mr. ERSTE. Thank you, Mr. Chairman. Thank you for the invitation to speak to you today.

I am speaking today as a fellow of the Citizens League Research Institute. I am speaking as past assistant director and research director over the last 8 years, not as a senior advisor to the superintendent. I would like that noted for the record, because the witness list has it the other way.

The Citizens League is a 100-year-old good government organization, founded by Frank Garfield, son of President Garfield, to clean up turn-of-the-century Cleveland City government. Our mission is "to monitor and improve the performance of governments in the region through active citizen involvement. . . . Reflecting the diversity of our membership, our organizations perform all their respective functions without bias, partisanship, or concern for any special interest other than the improvement of local governments." That is who the Citizens League is.

And then, following the lead of Congressman Hoke, I would like to begin by telling you what I will not discuss today. The Citizens League Research Institute has not directly studied the effectiveness of mandatory busing in Cleveland. We are in no position to determine whether the change in Cleveland's housing patterns away from a nearly complete segregation by race 30 years ago to the more limited segregation which exists today, is a result of the successful racial desegregation of the Cleveland schools, or not. In other words, we did not study whether the logic of *Swann* v. *Charlotte-Mecklenburg* was right and produced the kind of results they sought here in Cleveland; in other words, that the egregious behavior of the school officials to create and maintain a racially segregated system contributes to the racial segregation of the city, and that the use of racial balance requirements as a starting point in the process of shaping a remedy—with bus transportation as a tool of school desegregation—would help cure either the resource or educational deficiencies suffered by black children, and possibly stimulate desegregation of the city.

We do know that in September 1995, what has been called "forced busing" is essentially irrelevant in the Cleveland school desegregation case. I think Mr. McMullen made that clear. We know that the parties to the lawsuit and most of the Cleveland community agree that the time for "forced busing" has passed. We know that the parties agreed to this new student assignment plan, which is the major tool for getting students out to schools and has been the tool used for accomplishing desegregation, that the plan they agreed to this last spring does allow for significantly more choice, and we know that letting parents have more choice of where their children go to school has yielded a system which remains largely desegregated, which supports the results we obtained in our survey, which I will discuss in a moment. We also know that only 600 of the district's 70,000 students did not receive an assignment they wanted, whether it was their first or second or third choice, and that no child attends an all-black school without their parents' assent.

Finally, we know that the progress made on student assignment by the parties in Cleveland's school desegregation case has resulted from their renewed emphasis on what is best for the children of Cleveland, and a rejection of the continued focus on the interests of adults. This is something the Citizens League called for many times over the past years. In fact, in 1991, when the newly elected reform school board came into office, we said, "Negotiate a settlement of the desegregation case. Years of litigation to end the court-ordered desegregation of the schools have proven costly and unsuccessful and have unnecessarily exacerbated division in the commu-

nity." Rather than litigation, we urged a constructive dialogue among the parties.

This past spring, we said the district and the State, as they prepared this new student assignment plan, must be as sensitive to the symbolism of the student assignment plan as they are to the legitimate rights and concerns of the plaintiffs, especially regarding the issue of predominantly white schools.

However, neither the district nor the State should be burdened by such symbolism, although they must bear the responsibility of providing for the plaintiffs' constitutional rights.

Providing for these important, but not irreconcilable, goals requires a careful and respectful negotiating strategy by the district.

Finally—and this is a big issue in Cleveland, as you have learned—ignore the political implications of student assignment. Vigorously avoid the divisive Cleveland tradition of using the desegregation case as a political expedient. Base the decision of where children should go to school only on what is best for the education of Cleveland's students.

So that is where the Citizens League is on the record on this particular issue.

One of the many things we have studied in past years is the view of Greater Clevelanders on race relations and integrated schools, and the view of Cleveland parents specifically on the relative importance of school quality, proximity to home, parental choice, and racial mix in the development of Cleveland's new student assignment plan.

In 1991, we found that most Greater Clevelanders, within the suburbs and within the city, say that they want racially mixed neighborhoods and schools. They also said that better education for children is one of the most important incentives for getting people to move into a neighborhood mostly of another race, whether it is white or black.

We also found that letting parents choose the schools their children will attend was volunteered most often by Cleveland residents in answer to the question "What do you think would be the best way to provide racially mixed schools for those that want them?"

Our 1992 survey, which is the bulk of what I will discuss today, was conducted near the beginning of the negotiations among the parties to the school desegregation case. As Mr. McMullen mentioned, in 1992, discussions began to devise a new student assignment plan, at the request of the judge. In an effort to provide reliable data on the topic to the general public, to stimulate a responsible public discussion of this traditionally volatile topic in our community, our annual poll included a section on student assignment.

We have four conclusions on student assignment, based on our poll results. The first has to do with educational quality: educational quality is by far the most important criterion for assignment of students. Most Cleveland parents say that the quality of education their children receive is more important than the location of the school they attend.

Our second conclusion has to do with choice, proximity to home, and racial mix: Choice and proximity to home are more important than reflecting the district's racial mix. Nearly all Cleveland parents want their children to attend the schools closest to home and

have as much choice as possible in picking the schools their children will attend. Few say that providing schools which reflect the districtwide racial makeup must happen, although around 40 percent say that it is a desirable goal. Both black and white Cleveland public school parents are more likely than non-Cleveland public school parents, however, to say that racial makeup is important.

Our third conclusion had to do with all-black schools. Obviously if you allow people choices and they go to neighborhood schools and they live in a segregated city, you are going to end up with schools all of one race—or you could. We did hear from parents, as I mentioned earlier, that the way to provide for the racially mixed schools for those that want them is to allow choice. We did find out when we asked, "Under which of the following circumstances would you allow schools which were all black," that 88 percent would allow them under some circumstances. The most significant answer was, "Only if student achievement is comparable to that in other schools." 76 percent said that student achievement would have to be comparable if all-black schools were allowed. That is equally true for parents with children and without children in the schools in Cleveland, it is equally true for black, white, and Hispanic Cleveland public school parents.

The final conclusion regarding student assignment that we reached—and I have copies of statistics, graphs, and charts for you if you would like them—is that one-race schools are not acceptable if they result from providing choice and proximity to home but ignore educational outcomes.

So when asked to consider trade-offs involving racial makeup, without taking into account the goal of achieving comparable educational outcomes, most Cleveland parents say that avoiding one-race schools is less important than proximity and as important as choice—but black Cleveland public school parents say prohibiting one race schools is more important than both proximity and choice. And there is a not subtle difference, upon reflection, for black parents, which explains why those results might be a little bit different. In the initial question that I mentioned, we asked about all-black schools and we found out that African-Americans in Cleveland do not necessarily have any kind of problem at all with all-black schools, provided that the educational quality is comparable. When the phrase "one-race" schools is used, however, in tradeoff situations, we do not get that kind of answer, and it struck me this past spring that perhaps the reason for that is the symbolic importance of "one race," which could be "all white," which was the original problem in this district, versus all-black schools.

Finally, we did ask questions of those whose children were not in the Cleveland schools, both in the city and out in the suburbs, and we found that changes to student assignment could bring new students into the Cleveland schools. Across Cuyahoga County, those whose children were not in the Cleveland schools said they would send their children to the Cleveland schools only after increases in quality—educational quality—and safety and only if they had some choice where their children attended. Only 5 percent said that they would never send their children to the Cleveland schools.

We had a couple of conclusions: One, it is a mistake to consider busing in isolation from issues of educational quality, safety and school choice by parents.

The importance of busing, number two, is that it is a symbol for our community. Busing is a symbol with a life of its own, a life apart from its use to redress the terrible moral and legal wrong that was visited upon the black children of our city by our leaders.

It has a different symbolic meaning for African-Americans, for whom its typical meaning was better schools for their children, than for white parents, for whom the typical meaning at the beginning of the case was worse educational experiences.

Whatever its meaning, busing is an out-of-date symbol for our community. Black parents, as indicated by our poll, suggests they are willing to trade away busing for a better education for their children. White parents are willing to bus their children if necessary to obtain for them a better education. So busing seems to be way down the list of issues that are important for Cleveland school parents.

Rather than urging your focus on the use of busing to desegregate, I would urge a focus on an examination of the ways in which school systems like Cleveland 20-some years ago, which was found guilty of some pretty egregious behavior and its community which supported that behavior, ways in which both the district and the community could be held accountable for their actions and supported in their efforts to right the wrongs they have chosen, especially regarding educational outcomes. I think you may find, although I am not sure, that forced busing could be needed to assure justice in some cases. I think that was *Swann* v. *Charlotte-Mecklenburg's* point. Although the benefits of hindsight, which we all now have, and creativity ought to be able to afford us the opportunity to devise better solutions.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Erste follows:]

Prepared Statement of Louis Erste, Fellow, Citizens League Research Institute

Honorable Chairman and Members of the House Judiciary Subcommittee on the Constitution. Thank you for the invitation to speak to you today on issues related to the effectiveness of the mandatory transportation of Cleveland public school students for purposes of desegregating the Cleveland schools.

My name is Louis Erste. I am a Fellow of the Citizens League Research Institute – on whose behalf I am testifying today – and presently serve as Senior Advisor to the Superintendent of the Cleveland Public Schools (on whose behalf I am not testifying today).

The Citizens League is a 100-year-old good government organization, founded by Frank Garfield, son of former President Garfield, to "clean up" turn-of-the-century Cleveland City government. Our mission is "to monitor and improve the performance of governments in the region through active citizen involvement...Reflecting the diversity of our membership, our organizations perform all their respective function without bias, partisanship, or concern for any special interest other than improvement of local governments."

Let me begin by telling you what I will not discuss today. The Citizens League Research Institute has not directly studied "The Effectiveness of Mandatory Busing in Cleveland." We are in no position to determine whether the change in Cleveland's housing patterns – away from nearly complete segregation by race 30 years ago to the more limited segregation which exists today – is a result of the successful racial desegregation of the Cleveland Public Schools which has occurred.

In other words, we did not study whether the logic of the U.S. Supreme Court in Swann vs. Charlotte-Mecklenburg Board of Education (1971) was right and produced positive results in Cleveland – i.e. that the egregious behavior of Cleveland's school officials to purposely create and maintain a racially-segregated school system (in which black schools received less resources and produced more poorly-educated children than white schools) contributed to the racial segregation of the city, and that the use of racial balance requirements as "a starting point in the process of shaping a remedy" with the use of "bus transportation as one tool of school desegregation" would help cure the resource and educational deficiencies suffered by black children, and possibly stimulate desegregation of the city.

We do know that, in September of 1995, what has been called "forced busing" is essentially irrelevant in the Cleveland school desegregation case. We know that the parties to Cleveland's school desegregation lawsuit – and most of the Cleveland community – agree that the time for "forced busing" has passed. We know that the parties agreed to a new Student Assignment Plan this past spring which allows for significantly more choice by parents. (The Student Assignment Plan assigns individual students to particular schools. Such plans have been one of the major tools for accomplishing desegregation in the Cleveland Public Schools.)

Furthermore, we know that letting parents have more of a choice where their children go to school has yielded a school system which remains largely desegregated – and that, although only about 600 of Cleveland's public school students did not receive an assignment to a school they asked to attend this fall, no child attends an all-black school without their parents assent.

Finally, we know that the progress made on student assignment by the parties in Cleveland school desegregation case has resulted from their renewed focus on what's best for the children of Cleveland – and a rejection of a continued focus on the interests of adults.

We are pleased that our earlier advice has been heeded. In 1991 we said to the newly-elected reform school board, "Negotiate a settlement of the desegregation case. Years of

litigation to end the Court-ordered desegregation of Cleveland's schools have proven costly and unsuccessful and have unnecessarily exacerbated division in the community. A new approach -- one characterized not by conflict but by constructive dialogue among the parties involved -- is necessary."

And this past spring we said...

"Seek to establish a student assignment plan which provides for stable student populations within neighborhood and magnet schools.

- The District and the State must be as sensitive to the symbolism of the student assignment plan as they are to the legitimate rights and concerns of the plaintiffs, especially regarding the issue of predominantly white schools.

- However, neither the District nor the State should be burdened by such symbolism, although they must bear the responsibility of providing for the plaintiffs' constitutional rights.

- Providing for these important -- but not irreconcilable -- goals requires a careful and respectful negotiating strategy by the District.

Ignore the political implications of the student assignment plan. Vigorously avoid the divisive Cleveland tradition of using the desegregation case as a political expedient, whether to gain public support for another tax levy attempt or for the reelection of Board members. Base the decision only on what's best for the education of Cleveland's students."

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One of the many things we have studied in years past is the view of Greater Clevelanders on race relations and integrated schools, and the view of Cleveland parents on the relative importance of school quality, proximity to home, parental choice, and racial mix in the development of Cleveland's new Student Assignment Plan.

In 1991, we found that most Greater Clevelanders (77%) say they want racially mixed neighborhoods and schools – but that better education for children is one of the most important incentives for getting people to move into a neighborhood mostly of another race (65%).

We also found that letting parents choose the schools their children will attend was volunteered most often (by 29% of Cleveland's residents) in answer to the question, "What do you think would be the best way to provide racially mixed schools for those that want them?"

The Citizens League's 1992 survey was conducted near the beginning of negotiations among the parties to Reed v. Rhodes to bring the case to a close. One of the major issues at that time was the need for a new Student Assignment Plan. In an effort to provide reliable data on the topic to the general public – in order to stimulate responsible public discussion of this potentially volatile topic, our annual poll included a section on student assignment.

Our survey also measured the views of non-Cleveland Public Schools parents throughout Cuyahoga County on the changes necessary before they would send their children to the Cleveland Schools.

I will begin with the importance of student assignment.

EDUCATIONAL QUALITY

Our first conclusion is that EDUCATIONAL QUALITY IS THE MOST IMPORTANT STUDENT ASSIGNMENT CRITERION.

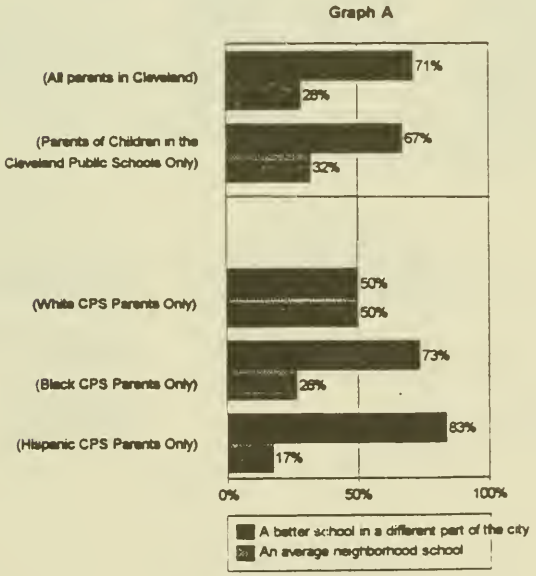
Most Cleveland parents (71%) say the *quality of education* their children receive is *more important than the location* of the school they attend.

- Most black (73%) and Hispanic parents (83%) say they would pick a *better* school in a different part of the city over an average *neighborhood* school.
- White CPS parents are split 50% to 50% on this issue.
  - Half say they would pick a *better* school in a different part of the city over an average *neighborhood* school.
  - Half would pick an average *neighborhood* school over a *better* school in a different part of the city.

What if your choice was between an average neighborhood school and a better school in a different part of the city?

Which would you actually send your child to?

Graph A



CHOICE, PROXIMITY, AND RACIAL MIX

Our second conclusion is that CHOICE AND PROXIMITY ARE MORE IMPORTANT THAN REFLECTING THE DISTRICT'S RACIAL MIX.

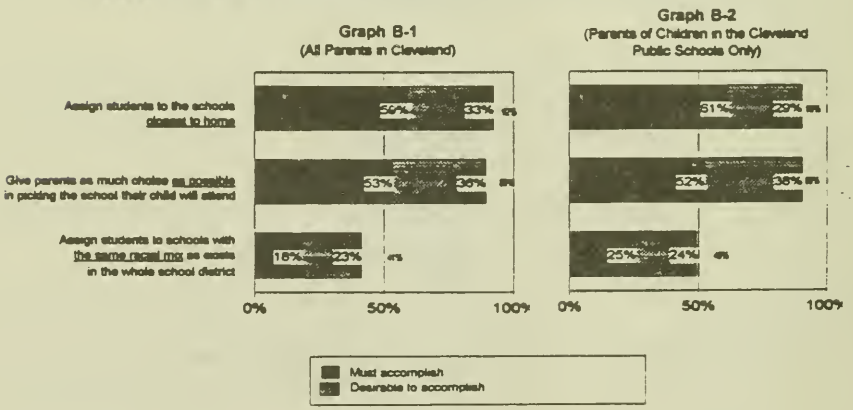
Nearly all Cleveland parents want their children to attend the schools *closest to home* (92%) and as much *choice* as possible (89%) in picking the schools their children will attend.

Few Cleveland parents (18%) say the new Student Assignment Plan *must* provide schools reflecting the *District-wide racial makeup* -- and only two-fifths (41%) consider this goal desirable to accomplish.

- CPS parents (25%) are more likely than others to say the new Student Assignment Plan *must* provide schools reflecting the *District-wide racial makeup.*

The parties to the Cleveland Public Schools desegregation case have been asked by the Federal Court to consider a new Student Assignment Plan — the plan which determines where each Cleveland public school student goes to school.

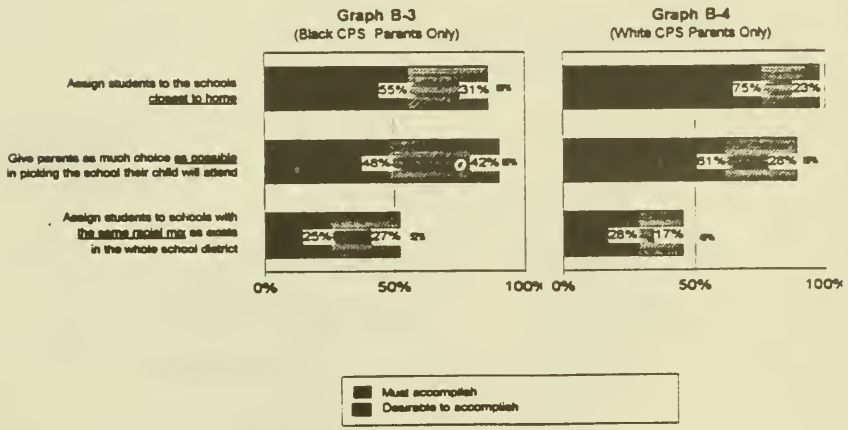
For the new Student Assignment Plan to be acceptable to you personally, which of the following goals must it accomplish and which must it avoid — and which would be desirable but not necessary to accomplish or avoid?



- Black CPS parents are *split* (52% to 48%) on whether schools should reflect the District's racial makeup.

- Almost all black CPS parents want to send their children to schools *closest to home* (86%) and have as much *choice* as possible in picking their children's schools (90%).

For the new Student Assignment Plan to be acceptable to you personally, which of the following goals must it accomplish and which must it avoid — and which would be desirable but not necessary to accomplish or avoid?



ALL-BLACK SCHOOLS

Our third conclusion is that ALL-BLACK SCHOOLS ARE GENERALLY ACCEPTABLE TO CLEVELAND PARENTS.

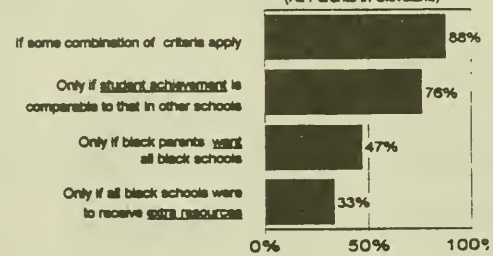
Most Cleveland parents (88%) say they would allow all-black schools if certain conditions were met. This is equally true for those with and without children in the Cleveland public schools – and for black, white, and hispanic Cleveland Public Schools parents.

- Most (76%) say *student achievement must be comparable* to that in other schools.

- Less important are that black parents must *want* all-black schools (47%) and that all-black schools receive *extra resources* (33%).

Under which of the following circumstances would you allow schools which were all black?

Graph C-1
(All Parents in Cleveland)



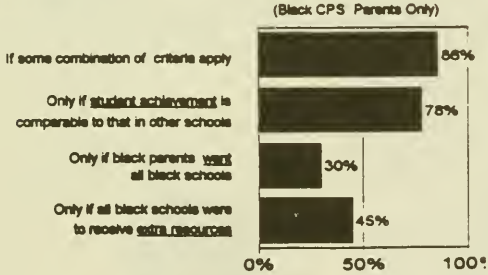
- Black parents (45%) are more likely than whites (19%) to say all-black schools must receive *extra resources*.

- White CPS parents (55%) are more likely than black CPS parents (30%) to consider whether black parents *want* all-black schools.

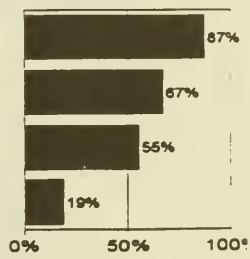
- Few hispanic CPS parents (17%) have specific opinions on all-black schools, although most (86%) do not oppose them.

Under which of the following circumstances would you allow schools which were all black?

Graph C-2
(Black CPS Parents Only)



Graph C-3
(White CPS Parents Only)



ONE-RACE SCHOOLS WHICH IGNORE EDUCATIONAL OUTCOMES ARE NOT ACCEPTABLE

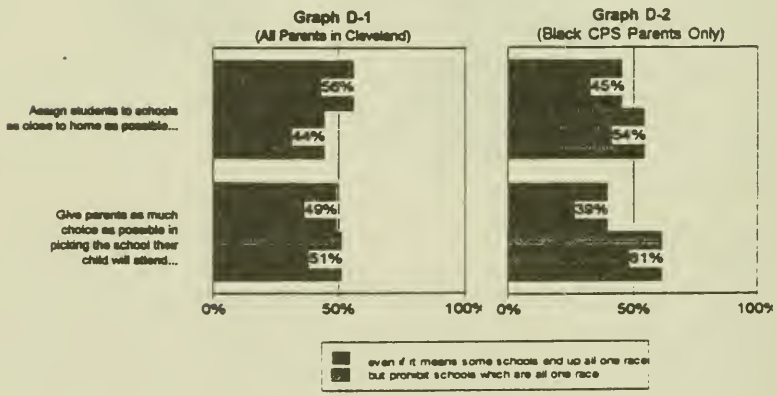
Our final conclusion on student assignments is that ONE-RACE SCHOOLS ARE NOT ACCEPTABLE IF THEY RESULT FROM PROVIDING CHOICE AND PROXIMITY BUT IGNORING EDUCATIONAL CUTCOMES

When asked to consider trade-offs involving the racial makeup of schools *without* taking into account the goal of achieving comparable educational outcomes, most Cleveland parents say avoiding one-race schools is *less* important than *proximity* (56%) and *as* important as *choice* (49% to 51%).

- Most black CPS parents say prohibiting one-race schools is *more* important than both *proximity* (54%) and *choice (61%)*. [Note, for black parents, the difference between -- and symbolic importance of -- "one-race" vs. "all-black" schools.]

How important is (children going to school close to home / parents having as much choice as possible) compared to the racial mix in each school?

Would you rather...



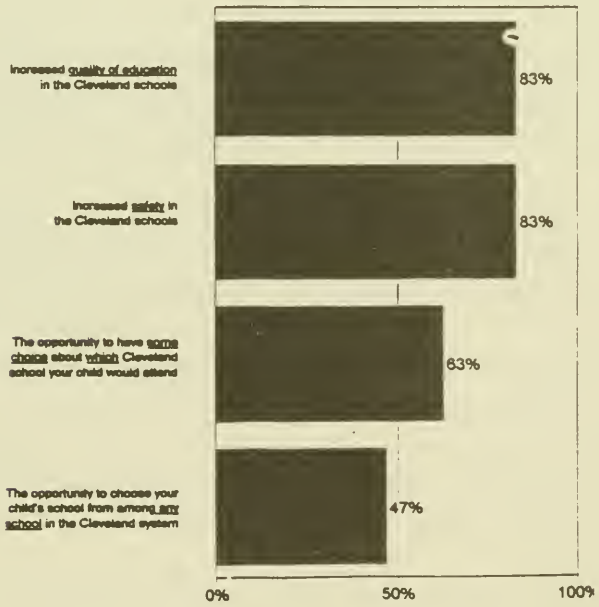
CHANGES WOULD AFFECT ENROLLMENT

A related conclusion is that CHANGES WOULD BRING NEW STUDENTS INTO THE CLEVELAND PUBLIC SCHOOLS.

Cuyahoga County parents who do *not* currently send their children to the Cleveland Public Schools say they would do so only after *increases in quality (83%) and safety (83%)*, and only if they *had some choice where their child attended (63%)*. Only 5% volunteered that they would *never* send their children to the Cleveland Public Schools.

As I read the following list, please tell me which items would be absolutely necessary before you would send your child to the Cleveland Public Schools...

Graph E-1
(All Cuyahoga County parents without children in the Cleveland Public Schools)



CONCLUSIONS

1. It is a mistake to consider "busing" in isolation from issues of educational quality, safety, and school choice by parents.

2. The importance of "busing" is that it is a symbol for our community.

3. "Busing" is a symbol with a life of its own -- a life apart from its use to redress the terrible moral and legal wrong that was perniciously visited upon the black children of our city by our leaders.

4. It has a different symbolic meaning for African-Americans (for whom its typical meaning was better schools for their children) and whites (for whom its typical meaning was a worse educational experience for their children).

5. Whatever its meaning, "busing" is an out-of-date symbol for our community. Black parents are now willing to trade away "busing" for a better education for their children, and white parents are willing to "bus" their children if necessary to obtain for them a better education.

6. Rather than urging you to pass a bill which uniformly outlaws the use of "forced busing" to desegregate schools across the United States, I would urge you to pass a law requiring a careful examination of the ways in which a particular school system, found guilty of such egregious behavior as that taken by the former school administrators in Cleveland and Columbus, and its community (which is typically supportive of the egregious behavior, thus requiring federal action to override it) can be both held accountable for their actions and supported in their efforts to right the wrongs they have chosen. I think that you may find "forced busing" to be needed in some cases to assure justice -- although the benefits of hindsight should be able to be used to devise better solutions.

Thank you and I would be happy to answer any questions you may have.

APPENDIX

METHODOLOGY

Results for 1992 are based on 786 telephone interviews with randomly selected Cuyahoga County residents conducted from July 10-August 4, 1992. The sample is comprised of four overlapping probability-proportionate-to-size subsamples, including 476 Cleveland residents, 310 suburban residents, 52 Hispanics, and 277 parents of children in the Cleveland Public Schools (including 180 black CPS parents). Total sample results are weighted to match the actual proportion of Cleveland Public School households in the city, and of blacks, whites, and hispanics in the city and in the Cleveland public schools. Results for 1991 are from 793 interviews conducted March 22-April 26, 1991.

Questionnaire development and survey analysis were directed by CLRI Assistant Director Louis J. Erste, and conducted by Erste, Research Associate Richard A. Marountas, and Intern Mark J. Hogan. CLRI contracted with Cleveland Field Resources to conduct the telephone interviews and computerize the survey data. Sampling error – the amount by which survey results may differ from the actual population value – for a simple random sample of 786 is approximately $\pm$ 3.5%, for 476 is approximately $\pm$ 4.5%, for 277 is approximately $\pm$ 5.8%, and for 180 is approximately $\pm$ 7.1%. This research was funded in part by The George Gund Foundation, The Cleveland Foundation, The Cleveland Initiative for Education, and CLRI corporate supporters and members.

Mr. CANADY. Thank you. I do not have any questions of this panel. Mr. Hoke.

Mr. HOKE. Thank you, Mr. Chairman.

I wanted to ask Dr. Bier, you have done hundreds of interviews with home sellers as they leave Cleveland, is that——

Mr. BIER. Not actual interviews, but surveys, mail surveys.

Mr. HOKE. Well, I am not sure then that you will have enough information because I am trying to get to the subtlety. I think you said 65 percent indicate that they leave the city because of the education system, is that——

Mr. BIER. Sixty-five percent said they are very dissatisfied with the schools, whether or not they have children.

Mr. HOKE. Whether or not they have children. But we know that clearly education is either the top priority or is number two to safety, they are right next to each other, one and two.

Mr. BIER. They are very close, that is right.

Mr. HOKE. But you know, when you try to separate out the question of busing in the educational component, I am trying to understand what it is about it that parents find so objectionable. Is it their lack of ability to control where their children go to school, or is it actually the substance of it, where they actually go. In other words, is it their lack of choice and ability to control their own children's education by choosing a specific house in a specific neighborhood that is next to a specific school or in the district of a specific school? We know that that is clearly one of the reasons that people buy houses, to be in specific school districts or is their particular concern about the school that the student is going to? Or is this simply a distinction without difference?

Dr. BIER. Well, I think you are really asking a question which unfortunately our surveys have not really probed, so I would just be guessing at some of the answer there. I would guess that there is a safety issue there. And if one's children are to be bused into an area where one considers the possibility of harm to be fairly high, I think that alone will stop it. But I think the surveys that my colleague here was reporting, I think speak to this, really do speak to that, in that in that as long as the quality is there, busing is not a problem. The point is quality and safety of the institution.

Mr. HOKE. Well, the other thing that I see in your testimony is this question of economic status and personal control. It seems to me that that is an important issue when it comes to parents being able to decide where their kids go to school. Those who have the least economic power, those who are at the bottom of the economic rung of the ladder, are the ones least able to control where their kids finally go to school.

Dr. BIER. Right. Well, if we look simply in the larger context of society, I mean, the higher the income the more direction and control there is over the education of the youngsters involved. They will go to private schools. And I think that's the far extreme and the other extreme is of course those who simply lack the resources to have any choice whatsoever, and they are forced to go to what they have.

Mr. HOKE. I wanted to ask Mr. Erste one question about your finding that all-black schools are perfectly OK with African-American parents so long as they are convinced that the educational out-

comes are equal. I think this is an interesting finding and I think it is consistent with common sense on the issue. But it also reminded me of the opening line in Supreme Court Justice Clarence Thomas' concurring opinion in the *Jenkins* case where he says, "It never ceases to amaze me that the courts are so willing to assume that anything that is predominantly black must be inferior." Instead of focusing on remedying the harm done to those black school children injured by segregation, the Kansas City District Court sought to convert the Kansas City, MO, school district into a magnet district that would reverse the white flight caused by desegregation. And that seems consistent with the findings that you came up with, statistically, in the surveys that you have done. Do you think that is true?

Mr. ERSTE. It seems that Greater Clevelanders and specifically Cleveland parents do not have any question in their minds that the time for busing for desegregation purposes has passed. And I think going back 25 years into the minds of the people that ran the district and of the parents of African-American children, as well as parents of white children, my guess is that the thinking was a lot different, the view that since the white schools were the good schools, that is where all the resources went. You know, there was a track out at one school that was built at the same time a black school was built, the white school got a track, the black students had to run in the hallways. There was a lot of real visible signs of differences, so that all black schools "happened" to be inferior and it was found by law to be the case.

I think that the view that "well, let us have the black children go to school with the white children and the white parents are going to make sure that those schools are just as good as they were before, that will benefit the black children"—I think that is history, that is past, especially given the demographic changes of our city. I do not think black parents see all-black schools as in any way inferior, provided that the district takes the time and effort and resources necessary to make sure that educational achievement is comparable. Without statistics about what "comparable" means in the Cleveland district over time, it is hard to say whether the case has achieved its goal of comparable education, only at a lower level, although someone suggested that that is the case. I think the overall thrust of school reform in Cleveland now focuses on increased educational quality for everybody.

Mr. HOKE. Well, it is interesting you say that, because what appears to have happened with respect to the Cleveland schools is that we have in fact, to some degree, come up with equality of outcomes in that there are substandard outcomes for everyone in the system. Instead of achieving and striving toward a specific educational standard, a quality educational standard, that would be required for every student in the system regardless of the school, regardless of the neighborhood, regardless of their race we have made the schools equally deficient.

Mr. ERSTE. I think that the solution that has been called Vision 21 that the parties all agreed to a year or two ago, that the major focus of it and what pushed it in the first place and got all the air play had to do with busing—but the busing, the transportation of students for desegregation, was only 1 of 14 remedial orders in the

original case. The other 13 had to do with educational issues and it has been busing in this community that has always gotten the attention. I am not Judge Battisti, but I would guess that he thought that if we could somehow resolve the transportation issue, especially given the changed demographics of the city—we are a far more integrated city than we used to be, as segregated as we are—it would allow for a focus on the educational outcomes—but that is just a surmise.

Mr. HOKE. I thank you. Did you want to add something to that, Dr. Bier?

Dr. BIER. No.

Mr. CANADY. Mr. Flanagan.

Mr. FLANAGAN. Thank you, Mr. Chairman.

Let me just pick up where Mr. Hoke left off and ask this question. It is interesting how it always manages to come right back around. In your commentary, Mr. Erste, you seemed to allude to the fact that we have had success with the current school assignment system. And with only 600 parents that did not get their first choice, that is a qualified success toward integrating the school system. My question is of a broader nature. Could we have gotten to that point without the experience in Cleveland of forced busing?

Mr. ERSTE. If I could answer——

Mr. FLANAGAN. Just through these other factors involved in the general desegregation.

Mr. ERSTE. First, if I could answer that question, I would be a very rich man and I would not be here.

[Laughter.]

Mr. ERSTE. Second, I do not know—and that gets back to my references to *Swann* v. *Charlotte-Mecklenburg.* In a case where the entire system is racist or deemed racist, in that it purposely segregates by race, you needed a dramatic solution, and back then the dramatic solution they thought of was busing rather than the approach taken in Chicago where they tried to integrate or at least desegregate the city in some way. Let us desegregate the Cleveland schools and see if maybe that would affect Cleveland's housing patterns. And as you know, the "vestiges of discrimination" issue in some part considers the housing patterns as an issue. I do not really know. What I do know is that that is what happened here and the time for it is past.

Mr. FLANAGAN. I think that the four tenets that you brought up regarding quality, proximity and the necessity of or desirability or lack of desirability of a race-based school—acceptability I guess I should say of a racially monolithic school—is very interesting, and I think it demonstrates the fact that the priority of every parent is the education of their child, with a secondary—important but secondary—goal of having a complete racial mix. Do you think that is a pervasive view or that is a product of the fact that Cleveland is more integrated now and consequently it is not the problem it once was, and perhaps maybe then it was the overarching problem.

Mr. ERSTE. I think that in fact the symbolism issue I referred to earlier is important when we think of busing, and the whole desegregation case gets right to that point. Twenty-some years ago, better education was the thing black parents wanted most for their children, and the way to get that, as deemed necessary by the

court, was to put them in schools with white children, so that desegregation became synonymous with providing better education for African-American children. I think that perhaps the community has concluded that desegregation in and of itself does not provide—since we are already desegregated—the better education for students that they now want, whether it is better or worse than it was in terms of quality of education now and then.

So my guess is the same percentage would have said they wanted a better education for their children 25 years ago, but they would have thought about it differently in terms of busing, the symbolism that busing and desegregation have picked up along the way, and its importance in terms of righting the wrong. How the wrong was "righted" is a civil rights issue now rather than an educational issues that has to be set aside so the community can focus on the education. My guess is that the desire for improved education has not changed much.

Mr. FLANAGAN. I think qualitatively, whether anyone would be willing to choose whether segregation per se, apart from any other factor involved, provides economic advantages or provides a better education for children. Whatever that answer is, I think your experience demonstrates that all matters are secondary to the education of children, it is secondary to any ability to economically advantage oneself and one's family in the community. And if busing is an effective means to an end, terrific, but as an end in itself, I do not know that anyone is willing to force that issue.

Mr. ERSTE. Our results did suggest an interesting difference between Cleveland school parents whose children are in fact being transported around for desegregation purposes and suburban parents. When we asked about the issue of the importance of racial mix, it was almost twice as important to Cleveland parents, white and black, whose children are actually being bused for desegregation purposes, as compared to the suburban residents who may or may not have any experience of it. I think that the "doing" of desegregation in this community, to the extent it has had all sorts of negative consequences, also had many positive consequences in terms of some of its initial goals; i.e. the belief that maybe if black children and white children sat together they would not be afraid of each other because they would find out that they are human, and all of the things that were suggested 20-some years ago as benefits of desegregation and—typically—whether it is neighborhoods or schools or countries, I think that the experience has taught people something, and while it may or may not have turned out as good as everybody expected, it was not all bad.

Mr. FLANAGAN. No. I will finish up with Mr. Bier, I know you are being very indulgent, Mr. Chairman.

Although less than perfect, I think everyone we have talked to today and I imagine everyone we will talk to agrees that Cleveland is better today than it was 15 years ago insofar as the racial mix and integration of the city. Could we have gotten there without forced busing in light of the other factors and other matters that were involved in accomplishing the goals for the city at large?

Mr. BIER. Well, my judgment is that there is a larger responsibility for this problem that was not addressed through that solution. I think it is a larger responsibility that lies with everybody living

in this metropolitan area. We are all responsible for the condition of the city and those schools, those of us who live in suburbs. And I think if a course of action had been taken that incorporated the suburbs in some significant measure of responsibility, it could have been different, but simply because we happened to have a municipal boundary that goes down the street and on one side is the city and on the other side is the suburb, that was used as the basis for the solution, and I think I would argue—I only know of one example in the country and I think it is the county in which the city of Wilmington is located in Delaware, that that was a county solution, city and suburbs were involved in rectifying the conditions that existed there. In my judgment, that is what we needed then and that is what we need now.

Mr. FLANAGAN. Thank you, Mr. Chairman.

Mr. CANADY. I appreciate the testimony of these witnesses, we thank you for being with us today.

As this panel is leaving, I would like to ask the members of our third panel to come forward. We will have two witnesses on the third panel. I will introduce both of the witnesses and then recognize them in turn. Our first witness on this panel will be Mr. Larry Lumpkin. Mr. Lumpkin is president of the Cleveland Board of Education.

The second witness on the panel is Mr. Don Sopka. Mr. Sopka is presently serving his fifth term on the Broadview Heights City Council. He taught in the Cleveland public schools for nearly 30 years and was a teacher in 1978 when Cleveland began busing in order to achieve racial balance.

We appreciate both of you being with us today. Mr. Lumpkin, please proceed.

STATEMENT OF LAWRENCE A. LUMPKIN, PRESIDENT, CLEVELAND BOARD OF EDUCATION

Mr. LUMPKIN. Thank you, Mr. Chairman, good morning to you and members of the committee, for being here in the Cleveland area.

As you mentioned, I am the president of the Cleveland School Board, elected—appointed to the position in 1991, March, and then reelected in November 1991 and elected to the presidency in January 1992, currently of which I sit.

I too am a former teacher in the Cleveland school district for 7 years and also currently am a parent of students who attend currently the Cleveland school district.

I wish to thank the subcommittee for giving me this opportunity to discuss the sensitive and important issue of mandatory student transportation, vis-a-vis busing, with members of the committee today. As you well know, it is one element of the remedial order that governs the racial desegregation of this city's schools. I want to place this element in the context of *Reed* v. *Rhodes,* this city's public school desegregation lawsuit, and to discuss with you the efforts undertaken by the Cleveland Board of Education under my leadership as its president, to fulfill the court's remedial obligations and, at the same time, to address and reduce as much as possible the burdens that inevitably accompany mandatory student transportation.

The liability opinion and the remedial order. On August 31, 1976, the U.S. district court found the Cleveland Board of Education and the State Board of Education jointly and severally liable for having violated the 14th amendment right of African-American students to equal protection under the laws by intentionally fostering and maintaining a segregated school system here in Cleveland. The local defendants were directed to implement a comprehensive, systemwide plan of actual desegregation which eliminated to the maximum extent feasible the systemic pattern of schools being substantially disproportionate in their racial composition. In fact, the vast majority of schools were one race schools.

The court's ruling, which was affirmed on appeal, was monumental. It stopped dead in its tracks a policy that had been pursued by the Cleveland public schools and condoned by the State for years—a policy that led to and perpetuated educational inequalities in our city—inequalities which we all know readily translate into unequal job and career opportunities, inequalities that have an adverse impact for years to come on all citizens of this community, not just on African-American students.

The breadth of the remedial order. As broad as the problems were, so too were the remedies broad. To give you some idea of the immense scope of the district court's remedial order of 1978, which is still in place today, let me run down for you the 14 component areas covered by that order. Those areas are: Components (1) student assignments; (2) testing and tracking; (3) reading; (4) counseling and career guidance; (5) magnet and vocational schools and programs; (6) cooperation with universities, business and cultural institutions; (7) extracurricular activities; (8) staff development in human relations and student training in human relations; (9) student rights; (10) school-community relations; (11) transportation; (12) safety and security; (13) management and finance; and (14) staff desegregation.

Mandatory student transportation, or busing—the issue that brings us here today—finds it way directly into two of these components. In short, Cleveland's public school desegregation lawsuit is far more than just a busing case.

Compliance with the remedial order. Since 1978, the Cleveland school district has been working towards the goal of compliance with the remedial order and the myriad subsequent orders that modify, define and redefine the parties' respective obligations to remedy the 14th amendment violations.

(A) Student assignments under the remedial order. The court-approved desegregation plan divided the district into six different clusters. Each cluster typically paired a high school attendance area on Cleveland's predominantly African-American east side with a high school attendance area on Cleveland's predominantly white west side. Following this plan and subsequent modifications to it, the district has assigned students to schools and programs in a desegregated manner since 1979. The local defendants have also adopted a policy and related administrative regulations to ensure that intentional racial segregation of students and staff does not recur in the district.

Busing was but one way to create the racial balance in schools as required by the U.S. Constitution. The Cleveland City school

district employed many other tools to achieve that goal, such as by offering popular educational and vocational programs at magnet schools—another component of the remedial order—which attract students from around the district to particular school facilities. Since their inception and an enrollment of a few hundred students, magnet schools have grown tremendously in popularity, and today almost 20 percent of the students in the Cleveland public schools are enrolled in one of our magnet programs.

(B) Progress in the desegregation of school facilities. When the process of court-ordered desegregation of the Cleveland public schools began, most individuals in this city recognized that the task would not be an easy one. But the longevity of Cleveland's school desegregation case does not mean lack of progress. In 1973, when the lawsuit began, the Cleveland public schools were substantially segregated along racial lines and it was evident from testimony elicited in the trial that Cleveland's separate schools were not equal. For example, evidence at trial showed that in 1975, slightly over 88 percent of students attending the Cleveland public schools with a comprehensive or general curriculum went to a school where the student population was 90 percent or more one race. Slightly over 91 percent of African-American students attended such so-called one-race schools, an increase from 51 percent in 1940. And you have a chart attached at the back that indicates graphic representation of racially identifiable schools in the Cleveland public schools since 1973, which I think this chart also reflects for a larger blow up of the illustration.

I am happy to report that significant progress has been made particularly in meeting the district court's racial balance criterion—that is, maintaining each school's student body within plus or minus 15 percent of the established racial mix of the entire district, which is approximately 30 percent white and 70 percent African-American. As the schools falls more and more into racial balance that reflects the overall makeup of the community, busing becomes less of a significant factor in the equation.

(C) Creating greater parental and student choice. In 1992, Judge Battisti made it clear that the district court "did not set out to run a busing company. Transportation has been one of the tools for achieving desegregation. . . . The extent to which it is still necessary or desirable is a question that may be asked. In the course of asking though, it cannot be emphasized enough that transportation must be considered in the larger context of education, and the means of improving educational outcomes."

Following Judge Battisti's direction, the district created a two-tiered student assignment plan known as phase 1 and phase 2. Phase 1, approved in 1992, removed six elementary schools from the mandatory assignment program and made them community schools, drawing upon students who live within a 2-mile radius of each school. The rationale for this approach arose from the fact that each of these schools is located in a racially integrated neighborhood. Despite the absence of mandatory student assignments to the six phase 1 schools, the racial balance in those schools remained within the criterion set by the court. Yet, in some cases, the number of students transported actually increased primarily for reasons of safety.

Phase 2 of the process was Vision 21, a comprehensive 7-year education plan designed to address the outstanding remedial obligations. One key element of the plan—parental choice—was designed to diminish still further the role of mandatory student transportation plays in the equation. This element encompassed a dramatic expansion of the magnet school program and the introduction of a new concept known as community model schools. Parents and students can select from among a number of different community model schools in the particular region where they live or districtwide magnet schools, with the goal of desegregation being maintained. In formulating the plan, the district benefited from the input of thousands of individuals within the community who participated in 24 work teams and from the substantial assistance of the parties' joint expert, Dr. Gordon Foster. Vision 21's student assignment program was designed to be phased in over a 4-year period, the third year of which we have just implemented.

(D) Settlement agreement and partial unitariness as to student assignments. On May 25, 1994, the court approved a settlement agreement designed to end the case by the year 2000. That agreement encompasses many of the elements of the Vision 21 plan. However, given the unpredictability inherent in a controlled choice approach to student assignments, the onerous burden on school children and their education in constantly making reassignments, and the contemplated 4-year phase-in approach to desegregated student assignments under the Vision 21 plan, the district was unable to meet the strict racial criteria set forth in the settlement agreement. Thus, on October 26, 1994, the local defendants proposed a modified implementation schedule for student assignments and ultimately at the beginning of this year, requested from the district court an order dissolving component 1 on student assignments and for a declaration of partial unitary status. A declaration of partial unitariness on component 1 would eliminate the requirement of student transportation in Cleveland for purposes of desegregation.

The progress made by the Cleveland public schools in achieving the court's student assignment requirements as well as the practical realities in Cleveland decisively demonstrate that judicial resources and the district's strained financial and administrative resources will be better spent and the public's attention better directed towards those other areas of the remedial order where more resources and effort would work to achieve the underlying objective of the remedial order as has been accomplished in student assignments: the assurance that the children of the plaintiff class will receive a quality education in a desegregated system. It is time to concentrate on the other remedial aspects of Cleveland public school desegregation lawsuit.

(E) State control of the district. The steps described above that the board of education took to comply with its remedial obligations were derailed with the court-ordered takeover of this district by the state in March of this year. Now that the State is in control of this district, the State is left with the task of implementing the steps the board of education recommended prior to March 1995.

Let me make perfectly clear that the progression of steps taken by the board of education under my direction toward a system of

controlled choice does not diminish the value that mandatory student transportation played in ultimately desegregating the Cleveland public schools. As I mentioned at the onset, busing was but one factor in the remedial formula. It was a necessary factor in the late 1970's and the 1980's when school populations were dramatically segregated along racial lines. Clearly enunciated Federal law required racial balance in the Cleveland public schools, and that was achievable only through the use of mandatory student transportation in conjunction with other remedial tools like magnet programs.

The utility of mandatory student assignments to balance the racial composition of school building populations may have diminished as time has gone on, but that does not mean that all of the vestiges of discrimination have been eliminated. It is to that task that this district must now turn under the State's guidance and the state's direction.

That concludes my comments, gentlemen.

[The prepared statement of Mr. Lumpkin follows:]

PREPARED STATEMENT OF LAWRENCE A. LUMPKIN, PRESIDENT, CLEVELAND BOARD OF EDUCATION

INTRODUCTION

I wish to thank the Subcommittee for giving me this opportunity to discuss the sensitive and important issue of mandatory student transportation—busing—with the members today. As you well know, it is one element of the Remedial Order that governs the racial desegregation of this City's schools. I want to place this element in the context of *Reed* v. *Rhodes*, this City's public school desegregation lawsuit, and to discuss with you the efforts undertaken by the Cleveland Board of Education, under my leadership as its president, to fulfill the Court's remedial obligations and, at the same time, to address and reduce as much as possible the burdens that inevitably accompany mandatory student transportation.

THE LIABILITY OPINION AND THE REMEDIAL ORDER

On August 31, 1976, the U.S. District Court found the Cleveland Board of Education and the State Board of Education jointly and severally liable for having violated the Fourteen Amendment right of African-American students to equal protection under the laws by intentionally fostering and maintaining a segregated school system in Cleveland. The Local Defendants were directed to implement a comprehensive, system-wide plan of actual desegregation which eliminated to the maximum extent feasible the systemic pattern of schools being substantially disproportionate in their racial composition. In fact, the vast majority of schools were one race.

The Court's ruling, which was affirmed on appeal, was monumental. It stopped dead in its tracks a policy that had been pursued by the Cleveland public schools and condoned by the State for years. A policy that led to and perpetuated educational inequalities in our City—inequalities which, we all know, readily translate into unequal job and career opportunities; inequalities that have an adverse impact for years to come on all citizens of this community, not just on African-American students.

THE BREADTH OF THE REMEDIAL ORDER

As broad as the problems were, so, too were the remedies broad. To give you some idea of the immense scope of the District Court's Remedial Order of 1978, which is still in place today, let me run down for you the 14 component areas covered by that order. Those areas are: Components (1) student assignments; (2) testing and tracking; (3) reading; (4) counseling and career guidance; (5) magnet and vocational schools and programs; (6) cooperation with universities, business and cultural institutions; (7) extracurricular activities; (8) staff development in human relations, and student training in human relations; (9) student rights; (10) school-community relations; (11) transportation; (12) safety and security; (13) management and finance; and (14) staff desegregation.

Mandatory student transportation or busing—the issue that brings us here today—finds its way directly into only two of these components. In short, Cleveland's public school desegregation lawsuit is far more than just a busing case.

COMPLIANCE WITH THE REMEDIAL ORDER

Since 1978, the Cleveland city school district has been working towards the goal of compliance with the Remedial Order and the myriad subsequent orders that modify, define, and redefine the parties' respective obligations to remedy the Fourteenth Amendment violations.

A. Student Assignments Under the Remedial Order

The Court-approved desegregation plan divided the District into six different clusters. Each cluster typically paired a high school attendance area on Cleveland's predominantly African-American East Side with a high school attendance area on Cleveland's predominantly white West Side. Following this plan and subsequent modifications to it, the District has assigned students to schools and programs in a desegregated manner since 1979. The Local Defendants have also adopted a policy and related administrative regulations to ensure that intentional racial segregation of students and staff does not recur in the District.

Busing was but one way to create the racial balance in schools as required by the U.S. Constitution. The Cleveland city school district employed many other tools to achieve that goal, such as by offering popular educational and vocational programs at magnet schools (another component in the Remedial Order) which attract students from around the District to particular school facilities. Since their inception and an enrollment of a few hundred students, magnet schools have grown tremendously in popularity, and today almost 20 percent of the students in the Cleveland public schools are enrolled in one of our magnet programs.

B. Progress in the Desegregation of School Facilities

When the process of Court-ordered desegregation of the Cleveland public schools began, most individuals in this City recognized that the task would not be easy. But the longevity of Cleveland's school desegregation case does not mean lack of progress. In 1973 when the lawsuit began, the Cleveland public schools were substantially segregated along racial lines, and it was evident from testimony elicited in the trial that Cleveland's separate schools were not equal. For example, evidence at trial showed that in 1975, slightly over 88 percent of students attending the Cleveland public schools with a comprehensive or general curriculum went to a school where the student population was 90 percent or more one race. Slightly over 91 percent of African-American students attended such so-called one-race schools, an increase from 51 percent in 1940. (See attached chart for a graphic representation of the racially identifiable schools in the Cleveland public schools from 1973 to 1994.)

I am happy to report that significant progress has been made particularly in meeting the District Court's racial balance criterion—that is, maintaining each school's student body within plus or minus 15 percent of the racial mix of the entire District, which is approximately 30 percent white and 70 percent African-American. As the schools fall more and more into a racial balance that reflects the overall make-up of the community, busing becomes less of a significant factor in the equation.

C. Creating Greater Parental and Student Choice

In 1992, Judge Battisti made it clear that the District Court "did not set out to run a busing company. Transportation has been one of the tools for achieving desegregation. . . . The extent to which it is still necessary or desirable is a question that may be asked. In the course of asking though, it cannot be emphasized enough that transportation must be considered in the larger context of education, and the means of improving educational outcomes." (*Reed* v. *Rhodes*, 1992 LEXIS 4723 at *3 (N.D. Ohio Apr. 2, 1992.)

Following Judge Battisti's direction, the District created a two-tiered student assignment plan denominated as "Phases One and Two." Phase One, approved in 1992, removed six elementary schools from the mandatory assignment program and made them "community schools" drawing upon students who live within a two-mile radius of each school. The rationale for this approach arose from the fact that each of these schools is located in a racially integrated neighborhood. Despite the absence of mandatory student assignments to the six Phase One schools, the racial balance in those schools remained within the criterion set by the Court. Yet, in some cases, the number of students transported actually increased primarily for reasons of safety.

Phase Two of the process was Vision 21, a comprehensive seven-year education plan designed to address the outstanding remedial obligations. One key element of the plan—parental choice—was designed to diminish still further the role mandatory student transportation plays in the equation. This element encompassed a dramatic expansion of the magnet school program and the introduction of a new concept known as community model schools. Parents and students can select from among a number of different community model schools in the particular region where they live or districtwide magnet schools, with the goal of desegregation being maintained. In formulating the plan, the District benefitted from the input of thousands of individuals in the community who participated in 24 work teams and from the substantial assistance of the parties' joint expert, Dr. Gordon Foster. Vision 21's student assignment program was designed to be phased in over a four-year period, the third year of which we have just implemented.

D. Settlement Agreement and Partial Unitariness as to Student Assignments

On May 25, 1994, the Court approved a Settlement Agreement designed to end the case by the year 2000. That agreement encompasses many of the elements of the Vision 21 plan. However, given the unpredictability inherent in a "controlled choice" approach to student assignments, the onerous burden on school children and their education in constantly making reassignments, and the contemplated four-year phase-in approach to desegregated student assignments under the Vision 21 plan, the District was unable to meet the strict racial balancing criteria set forth in the Settlement Agreement. Thus, on October 26, 1994, the Local Defendants proposed a modified implementation schedule for student assignments, and ultimately at the beginning of this year requested from the District Court an order dissolving Component I on student assignments and for a declaration of partial unitary status. A declaration of partial unitariness on Component I would eliminate the requirement of mandatory student transportation in Cleveland for purposes of desegregation.

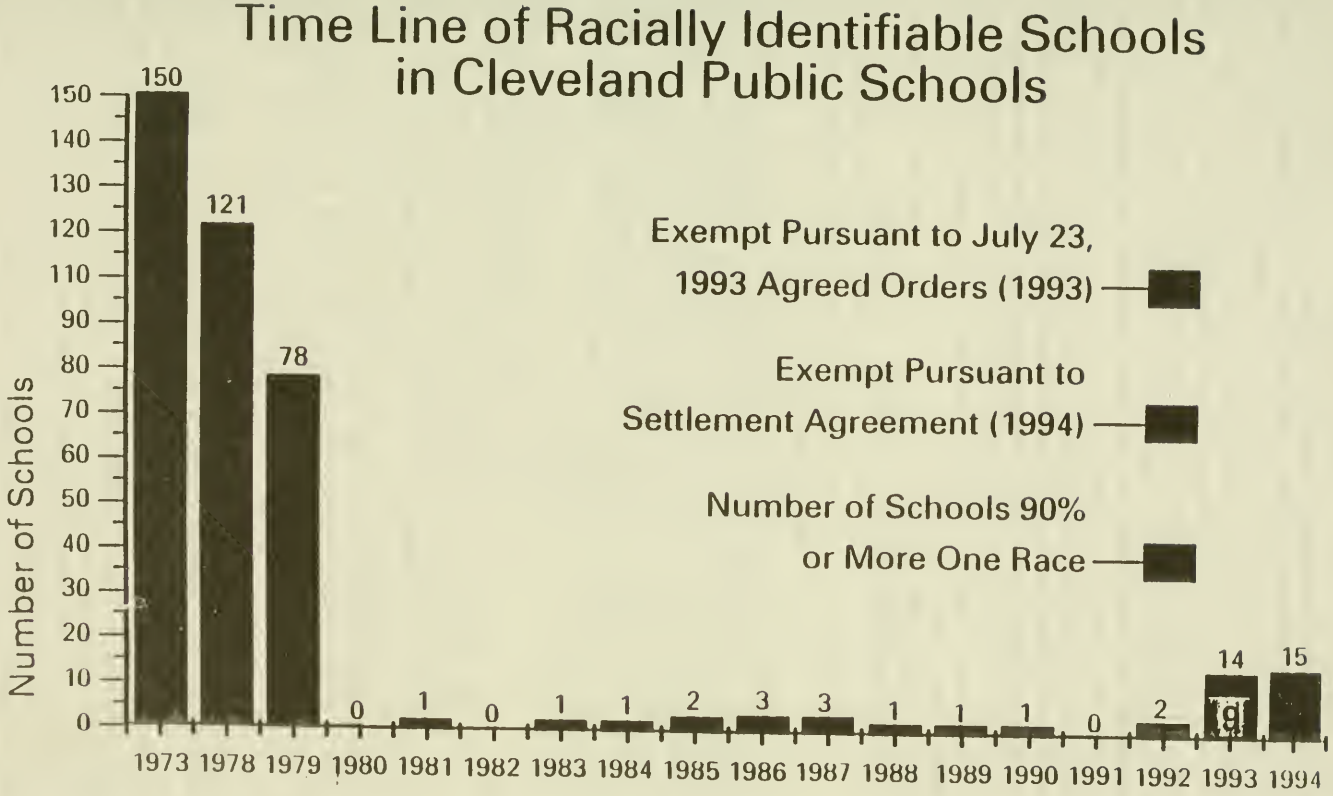
The progress made by the Cleveland public schools in achieving the Court's student assignment requirements as well as the practical realities in Cleveland decisively demonstrate that judicial resources and the District's strained financial and administrative resources will be better spent on (and the public's attention better directed towards) those other areas of the Remedial Order where more resources and effort will work to achieve the underlying objective of the Remedial Order as has been accomplished in student assignments: the assurance that the children of the plaintiff class receive a quality education in a desegregated system. It is time to concentrate on the other remedial aspects of Cleveland's public school desegregation lawsuit.

E. State Control of the District

The steps described above that the Board of Education took to comply with its remedial obligations were derailed with the Court-ordered takeover of this District by the State in March of this year. Now that the State is in control of this District, the State is left with the task of implementing the steps the Board of Education recommended prior to March 1995.

Let me make perfectly clear that the progression of steps taken by the Board of Education under my direction towards a system of controlled choice does not diminish the value that mandatory student transportation played in ultimately desegregating the Cleveland public schools. As I mentioned at the outset, busing was but one factor in the remedial formula. It was a necessary factor in the late 1970s and the 1980s when school populations were dramatically segregated along racial lines. Clearly enunciated federal law required racial balance in the Cleveland public schools, and that was achievable only through the use of mandatory student transportation in conjunction with other remedial tools like magnet programs.

The utility of mandatory student assignments to balance the racial composition of school building populations may have diminished as time has gone on, but that does not mean that all of the vestiges of discrimination have been eliminated. It is to that task that this District must now turn under the State's guidance and direction.


Time Line of Racially Identifiable Schools in Cleveland Public Schools
Number of Schools
150
140
130
120
110
90
80
70
60
50
40
30
20
10
0
150
121
78
0
1
0
1
1
2
3
3
1
1
1
0
2
14
15
1973 1978 1979 1980 1981 1982 1983 1984 1985 1986 1987 1988 1989 1990 1991 1992 1993 1994
Exempt Pursuant to July 23, 1993 Agreed Orders (1993)
Exempt Pursuant to Settlement Agreement (1994)
Number of Schools 90% or More One Race

Mr. CANADY. Thank you, Mr. Lumpkin. Let me ask you about something that came up toward the end of your testimony and that is the State takeover of the school system here. Would you elaborate on the circumstances of the State takeover? Why did that take place?

Mr. LUMPKIN. As you know, the current judge presiding over the case is Judge Krupansky. We experienced as a district the loss of key administrators who were in the district for some 3½ years, who have left the district to pursue other careers, including our superintendent, and given the nature of that type of top quality leadership leaving the district and the current status of the desegregation case in the district, Judge Krupansky stepped in and felt that someone needed to be held responsible for the implementation of his order and he so designated the then state superintendent Dr. Ted Sanders to be in control of and complete autonomy of the district.

Mr. CANADY. OK, thank you.

Mr. Sopka, please proceed with your testimony.

STATEMENT OF DON SOPKA, COUNCILMAN, BROADVIEW HEIGHTS CITY COUNCIL

Mr. SOPKA. Mr. Chairman, members of the committee, I want to thank you for permitting me to speak to you today. Before I begin, I would like to comment that I deliberately have not prepared a written statement. I will speak to you from a very few number of notes that I brought with me and from my heart. I think it is important that you know that it is me that does the speaking and that I am not simply parroting back words that have been written by someone else on my behalf.

Most importantly, I would like to bring to your attention today the fact that the desegregation order went beyond the transportation of students. One of the things that was involved very early on was the transfer of teachers. I would like to relate to you my own personal situation. I worked for 11 years as a sixth grade science teacher in Cleveland. I believe I was one of the best in the city. When the desegregation order was implemented, I was forced to leave the school that I was in. I was transferred to a school about 2 miles from the school that I was forced to leave, a school that was crying to have its science teacher back. For 6 weeks I sat in that school because there was no place to place me racially where the balance would fit. For 6 weeks, the citizens paid in the morning to have me read library books and in the afternoon to watch the John Lanegan movie on television. After that 6 weeks, I was transferred to a school where I was to teach second grade. I knew nothing about teaching second grade. I was so frustrated I went home, I talked to my wife, I had tears in my eyes, I said, "What am I going to do?" I found a lady in that school that would trade places with me. That year I taught fourth grade. I did the best I could. It was not the best that could have been done, but I did the best I could. The next year, I taught fifth grade. The following year I taught sixth grade and science and I thought to myself, "This is great, you are back." At the end of the year, that school closed.

I was transferred to another school where the climate was such that I knew that I was very disliked. I went through a period where I had spastic colon and I ended up taking so many pills that quite honestly I lost about 3 months of my life. Not as bad as a good friend of mine who ended in Marymont Hospital for 6 months curled up in a knot, that had a total nervous breakdown. I put in for a transfer from there and I ended up finishing my career at another school where I did not teach science, because quite honestly the science program by then no longer existed in the Cleveland public school system.

You have asked us not to talk about things that happened in the past. I bring this to you because I spoke with someone in the Cleveland public school system that is part of this Vision 21 program and indicated to me that starting this year there are almost 1200 transfers.

People looked at me and they said, "Well you have a certificate that says that you can teach K through 8," and so they just simply placed people, they did not care what was best for the children, what was best for the teachers. That is one of the things that happened.

Part of the order also was the implementation of special remedial programs. As part of these remedial programs, staff were brought in. They became part of the faculty. I can remember children going out of my classroom to be dealt with by these remedial people that could have been dealt with just as well in my classroom. But that brought up something else that you should be aware of. There is a difference between class size and pupil/teacher ratio. Pupil/teacher ratio is the total number of the teaching staff as compared to the number of children. We had a number of—a large number of faculty, but when you looked at the actual class size as compared to pupil/teacher ratio, we were having classes of 38 and 40, so that a couple of children could be tutored.

I will also tell you that the quality of these people that were brought in to do this kind of remediation was horrendously bad. I recall on one occasion going to the Natural History Museum with one of these individuals who broke off from the crowd, I was standing with my class and the person that was circulating us through the museum and the lady came back and she had one of those little airline bottles and she said, "Come on, let's go down the stairs, we'll get high." She was at the souvenir shop. I had to tell her, "I am sorry, that is maple syrup." That is the kind of thing we went through.

When I came to the public school system, we had programs that were absolutely classic examples of shining excellence, not only in Cuyahoga County or in the State of Ohio, but throughout this Nation. We had a science program, an elementary science program, that people came from California to observe. We had a garden program that people came from around the Nation to view. We had sports programs in all of our high schools that were the envy of many of the suburban school systems. All of that has come to an end. The money was placed in a situation where transportation was absolutely the priority.

A year and a half ago, I retired from a building that was built in 1927. The windows were some of those fantastic old cut glass

windows; the building was brick. If maintained properly, that building could have been used on into the future. It would be my guess that shortly it will not be. I do not think those windows have been painted for 30 years. The buildings have simply ceased to be maintained.

I would simply like to conclude by replying to one comment that I heard here, and that is maybe there was a time for this in the past and the time is not now. I would simply like to say for having been here through the whole thing, there was never a time to hurt children.

Thank you.

[Applause.]

Mr. CANADY. Thank you.

I do not have any additional questions. Mr. Hoke.

Mr. HOKE. Thank you. And thank you both for coming and testifying today .

Mr. Lumpkin, I believe that the neighborhood is one of the building blocks of our communities, and it is interesting—when you read the writings of George Washington, he thought of the original House of Representatives, that each Representative in the Congress actually represented a neighborhood, that that was the unit, the demographic unit that he conceived of being represented. The number in the original Congress was that each Representative was representing about 35,000 people, so it is a fairly large neighborhood.

But I believe that there are certain anchors that keep neighborhoods together. One being a school, one being a church or a temple or a mosque, another being a community center. These are things that really hold neighborhoods together. And I noted that in the testimony that Richard Neilson, representing your office, gave this past April, before the special master, he said, "The Cleveland public school district has no intention of moving toward a neighborhood school concept." Is that an accurate description of the district's activities, or do you see a time in the future when the district could move toward a neighborhood school concept?

Mr. LUMPKIN. Well, Mr. Chairman, Congressman Hoke, the direct reference to Mr. Neilson's comments in testimony, to my recollection, I cannot bring to mind the total scope of what his comments were to reflect. But in specific response to your question, as we prepare as a district to begin to address more of the parental concern and parental choice for our young people, there has to be some consideration given to the community. I think the design of the community model schools concepts that I aforementioned that has offered parents in this community more opportunity for choice, in reference to that particular model that, quite frankly may be closer to their home, does in fact reflect an opportunity for more community ownership, for more parental opportunity to be closer to the school and closer to their children. So in the grand scheme of what we are striving for, yes, we are looking to provide an opportunity for community model schools to expand themselves, not only just in the elementary and secondary level but also possibly to the high school level, which in fact would address more ownership of a community in the education of their children.

Mr. HOKE. So that is a goal of the school system?

Mr. LUMPKIN. Through the design of the community model schools concept, I would say yes.

Mr. HOKE. And would you like to see that extended to all of the schools, the community—I mean that is a school for whom all of the kids within a 2-mile radius go to that school, or are eligible to go to that school, right?

Mr. LUMPKIN. It is a concept that allows parents to choose a community model school concept that is in close proximity to their home. It could be more than 2 miles, it could possibly even be across town, given the nature of——

Mr. HOKE. Can I ask you a question? Is neighborhood school a buzzword?

Mr. LUMPKIN. Is neighborhood school a buzzword?

Mr. HOKE. Yes. I mean I am just wondering. I was reminded as I looked through your testimony and other testimony that there are all of these code words or buzzwords. When I was in Ireland a few years ago, I noticed that the Protestants in Northern Ireland call the city of Derry or Londonderry, "Londonderry," while the Catholics in Northern Ireland call it "Derry," because they hate the word London. As I looked through the testimony, you call it mandatory student transportation, other people call it busing, forced busing, and all these things become code words which really serve not to unify us to talk about the problems, but divide us. And it just occurred to me, does community model school mean the same thing as neighborhood school? It is almost like one is a word that you can use if you are coming at it from one perspective and the other is a word that you can use if you are coming at it from another perspective.

Mr. LUMPKIN. Well, I think it is one's interpretation, Congressman, quite frankly. However, as it relates to community model schools, there is a specific concept and initiative behind that terminology. Community model schools represent seven models that are available for choice of parents in the Cleveland public schools, and the intent of using community model schools is specific to identifying for the parents and assisting them to make the wisest, most educational choice for their children as possible.

Mr. HOKE. All right. Well, it does not sound like it is another term for neighborhood school.

I wanted to ask one other question if I could. When I reviewed the school board's filing for unitary status in January 1995, I noted that that motion was strictly limited to the student assignment component of the desegregation order. That would be maybe 2 of the 14 that you mentioned.

Mr. LUMPKIN. That is correct.

Mr. HOKE. Transportation and assignment.

The board did not pursue a more comprehensive approach, and obviously there is a lot of money involved in this, there is a lot of money that comes from the State on an annual basis, pursuant to the desegregation order. I wonder if, as I analyze this, if the continuation of the desegregation order, that the secret behind that or what is not being said is that we, the Cleveland public school system, need the State funding under the desegregation order to make ends meet, and that that is very much in play with respect to the desegregation order staying in effect. And I guess the question is

why did the board not pursue a more comprehensive approach, why did it strictly limit its motion with respect to the unitary status to transportation and assignment?

Mr. LUMPKIN. That is a very good question, Congressman. In fact, our intent, as you have described, was to provide for an opportunity for more parental choice. As I mentioned phase 1 and phase 2 was a 4-year phase in opportunity, which would give us an opportunity to provide for more parental choice. Given the nature of the strict guidelines on the racial balance, plus or minus 15 percent, the board deemed at that point in time that in order to phase in the opportunity for more parental choice—in essence move into phase 2 of a 4 year plan—we saw that it was necessary to have some relaxation of the plus or minus 15 percent criterion established by the remedial order. So that was the intent behind our filing in those specific areas, because all of the input that had been gathered by the 24 work teams, as I aforementioned, that brought parents to the table to design the Vision 21 plan, and we saw that if the criterion of plus or minus 15 percent was not relaxed, it would not allow all of that input, all of those parents' concerns to see the plan go to its fruition.

Mr. HOKE. But it is true that if the overall order was relaxed or eliminated and unitary status was granted, that there would be a substantial financial cost to the school district.

Mr. LUMPKIN. The formula, as it has always been in existence in the desegregation order, has always been that the district had to provide 50 percent. And that formula still is in existence. No matter what amount of dollars that come to the Cleveland school district, this community, this school district, is responsible for 50 percent of that, including the transportation cost.

Mr. HOKE. Right.

Mr. LUMPKIN. So when we look at many of the other components in the remedial order, specifically those that had to do with testing and providing, as Vision 21 was to do, more educational opportunity for our young people, we negotiated with the State a $295 million amount, of which the district was obligated to match $275 million, and we are still currently in that posture. Our resources that have come to the district over the years quite frankly, as you probably are well aware of, have not been—as you know, we have not passed a successful ballot issue in this community in over 25 years—has not met the financial resources or the financial needs of the district. So we stand in a posture where, 1, we still must meet our obligations in the agreement; and 2, we are operating in a deficit due to the lack of successful ballot issues over a 25 year period. So no matter what the agreement or the outcome is, we still have an obligation to provide financial resources so that we can meet those educational obligations.

Mr. HOKE. Right. No, I understand that. All I am pointing out is that clearly there is a disincentive for the school board to be granted unitary status at this point, because it would be very expensive in terms of the loss of the funds that the State provides. And that financial consideration, by necessity I would think, distorts to a certain degree how the school board views this.

Mr. LUMPKIN. If I could, Mr. Chairman, to the Congressman, there is one very significant point. The district has not met any of

its obligations in the remedial order since the existence of the remedial order. It would be truly derelict on behalf of this board to request total unitary status in fact when we have never met—the district has never met any of the obligations outlined by the court. As it relates to the two components that we did address, there was a specific plan designed and agreed upon by the parties through negotiations to achieve that objective.

Mr. HOKE. I understand. Mr. Chairman, thank you.

Mr. CANADY. Mr. Flanagan.

Mr. FLANAGAN. I have no questions for this panel, Mr. Chairman.

Mr. CANADY. Gentlemen, we thank you for being here, we appreciate your testimony.

Mr. LUMPKIN. Thank you.

Mr. SOPKA. Thank you.

Mr. CANADY. Our final panel today will consist of a number of witnesses. We are not sure that all of them are here, but if you are on the final panel, we would ask that you come forward and I will introduce the members of the final panel and then we will recognize each of them in turn.

The first witness for our fourth panel will be Ms. Rhonda Eberhardt. Ms. Eberhardt has a son who attends the public schools in Cleveland. She is named as a plaintiff class representative in the public school desegregation case of *Reed* v. *Rhodes.*

Next to testify will be Mr. Richard McCain. Mr. McCain is also a plaintiff class representative in the case of *Reed* v. *Rhodes.* He has two children presently in the Cleveland public school system.

The next witness will be Ms. Genevieve Mitchell. Ms. Mitchell is the executive director for community services at the Black Women's Center in Cleveland. Last year, she served on the board's education committee and her youngest son was bused as part of Cleveland's racial balancing activities.

Ms. Rashidah Abdulhaqq is our next witness. Ms. Abdulhaqq is a plaintiff class representative in the *Reed* v. *Rhodes* case. She has several children attending public school in Cleveland.

The last witness today will be Ms. Joyce Haws. Ms. Haws taught in Cleveland public schools for 27 years. For the past 13 years, she has been the communications director for the National Association of Neighborhood Schools in Cleveland.

A couple of our witnesses are not here. If they join us, we will certainly give them the opportunity to testify.

Our first witness will be Mr. McCain.

STATEMENT OF RICHARD McCAIN, PLAINTIFF CLASS REPRESENTATIVE, REED v. RHODES

Mr. MCCAIN. Thank you, Mr. Chairman.

I have been involved with the Cleveland public schools now for over 21 years, since the time when my oldest daughter entered the Grace Pound Elementary School in 1974. I have had four children graduate from Cleveland public schools, one of whom is now entering her fifth year as a teacher in the Cleveland schools. Currently I have three children and two grandchildren who are attending Cleveland schools. For those of you who are counting, I have one more child who is waiting to enter Cleveland schools within a couple of years.

My children or grandchildren have attended 10 different schools within the Cleveland system, and my involvement as a parent and as a volunteer in the schools has included serving as PTA president, serving as school community council chairperson at all three levels—elementary, middle and high school level—serving as cluster community council chairperson and as a member of the district community council. It has also included such things as helping to organize after school basketball program for elementary school boys in order to keep them involved in school and to provide positive activities for them, helping to organize men to serve as role models at the middle school level, to spend at least 2 hours a week in the schools helping to encourage the young people to remain in school and to work toward a better education; helping to organize parents and peer-to-peer tutoring at the high school level where parents and National Honor Society students were involved in providing a minimum of 2 hours per day of tutoring for high school students.

In addition to that, I have been involved in helping to conduct tours of Cleveland public schools for parents, so that they might be able to see the programs and to understand the safety in the various schools within their cluster. I have served on magnet school planning committees and on superintendent selection committees.

It is my understanding that the order handed down by the Federal court was not simply a busing order, but a remedial order aimed at improving the quality of education for all students in Cleveland public schools and especially those members of the plaintiff class whose rights had been violated by the Cleveland school system and the State of Ohio.

One of the things my mother taught me years ago was that an ounce of prevention is worth a pound of cure. And certainly effecting a remedy is often much more costly than preventing a problem in the first place. We would all agree that a stay in the hospital certainly costs more than an ordinary visit to our doctor.

Sadly, no remedy, regardless of how costly, can be effective unless it is applied. And sadly, the Cleveland Board of Education over the years has had a history I believe of spending more time and effort in fighting the orders of the court at the expense of the children of the Cleveland public schools. More time has been spent in trying to find ways to disobey the orders, you might say, than in being able to effectively find a remedy.

The issue of busing and student assignments has been used as, in some senses, a scapegoat or a fall guy, for the lack of commitment and the lack of implementation of quality education plans. We have heard even today that busing can be the cause for everything from neighborhood crime to almost bad streets and paving.

I believe there have been negative as well as positive benefits from busing, but we need to recognize that busing is not the major issue; that a quality, desegregated education for all students in Cleveland public schools must become the primary concern of the schools and all of us involved.

When we approached Vision 21 as a representative of the plaintiff class, we approached it with a measure of encouragement but also with some degree of doubt. Because for the first time in the history of this case, all three parties were involved in serious discussion of educational issues aimed at improving the quality of

education for all students. We recognize that Vision 21 is not a cure-all, and without implementation of the various parts and phases of Vision 21, that the plan amounted to just that, another plan. Just words with no real improvement in the level of education for Cleveland school students, and especially for those members of the plaintiff class.

The school board of the Cleveland public schools has demonstrated over the years a unique ability to fail in the implementation of programs which might lead to improved quality of education. The Cleveland Board of Education has demonstrated that it is not yet ready to be released from the monitoring and the oversight of the court. One of the things is I believe you do not place the convicts in charge of running the prison. There is much work that needs to be done, we need to continue to move forward in providing improved quality education for all Cleveland school students; however, this is not a time I believe to go back.

One of the things that I think has been brought out today is the question of could what has been accomplished in Cleveland's schools today with regard to the current agreement that we have reached, could it have been accomplished without busing. As a parent, as one who has been very involved in Cleveland schools, I do not know. I would like to think that it could have been. However, in Cleveland, I think we have failed over the years to emphasize the importance of quality education and we have placed too much emphasis on the rightness or the wrongness of busing, just as we are here discussing today.

Dr. Bier suggested that the truly effective remedy to the quality of education in Cleveland schools ought to include schools countywide, and yet I do not see a rush of people volunteering to develop a remedy that will include all of the schools within Cuyahoga County. So the question is could we have gotten to where we are today voluntarily. I do not know. Perhaps forced busing was necessary in order to move us to where we are today. But I think that it is important for us today to recognize that now the important thing for Cleveland school students is that we must put the emphasis where it ought to be, on quality of education for all students.

Thank you.

[Applause.]

Mr. CANADY. Thank you, Mr. McCain. Ms. Mitchell.

STATEMENT OF GENEVIEVE MITCHELL, EXECUTIVE DIRECTOR, COMMUNITY SERVICES, BLACK WOMEN'S CENTER

Ms. MITCHELL. Mr. Chairman, distinguished members of the committee and counsel, ladies and gentlemen of the audience, my name is Genevieve Mitchell and I am the executive director of the Black Women's Center. I would like to take this opportunity to personally thank Congressman Martin R. Hoke of Ohio, your colleagues in Congress and Joyce Haws of the National Association for Neighborhood Schools for providing me with the opportunity to speak at this forum today.

I am a resident of the city of Cleveland, member of the plaintiff class and a parent of three students in the Cleveland public school system. It is the latter of those three statements which warrants my comments today, and more specifically the manner in which the

desegregation initiative is adversely impacting the educational futures of black children.

Under the aegis of this failed social experiment, we have for 20 years witnessed the most malicious mechanism ever put forth under the pretense of integration to ameliorate segregation. This mechanism legally erected and politically mandated at the Federal court level represents, in my estimation, the most heinous and politically invasive process ever initiated to undermine quality education for all children who utilize the public education system in urban communities nationwide.

In Cleveland, desegregation represents, by some estimates, a $1 billion taxpayer investment which has facilitated the exodus of over 80 percent of this cities' families and children, it has facilitated the economic bankruptcy of this public school system, the curriculum deterioration of quality programs and services, imposed misery and profound hardship on the parents of the most vulnerable of all victims, our children, and has strategically destroyed any possibility of creating a fair and equitable system of education for all of our students——

[Applause.]

Ms. MITCHELL [continuing]. Excluding perhaps magnet programs—the overall depletion of teaching and support staff, competitive academic programs and sports and extracurricular activities have been pared down to the barest minimums. While at the same time, the transportation for profit agenda has been exacerbated. Black children's educational futures have essentially been prostituted and mortgaged in the most heinous manner, and as a parent and a black woman, I can no longer sit by and watch this and do nothing.

[Applause.]

Ms. MITCHELL. Structurally, busing has destroyed good schools, obliterated effective parent involvement and forced black children to be bused out of their communities to predominantly black schools in many cases. It has placed parents in the ridiculous predicament of having to request "special transfer" to have our children sent to school around the corner. It has facilitated the redistricting of neighborhood schools enabling them to be usurped for magnet programs where small groups of students are bused to what Jonathan Kozol, author of "Savage Inequalities" described as private schools operating under the auspices of the public school system, designed to deter the flight of parents to which to circumvent court-ordered busing, of which I am one.

It has fostered a wicked kind of intercompetitive animosity by implementation of the school within a school concept where "brave new world" stratification methods are implemented. Some have attributed the brutal stabbing of young Paul Wallace at Mooney Junior High School to this practice.

The busing nightmare has left poor black children walking long unnecessary distances to schools outside their neighborhoods and facilitated repeated and unnecessary school reassignments to justify race ratios. Of course, with the overall depletion of white student enrollments, I'd imagine the busing proponents will resort to kidnapping white children to maintain the practice.

[Laughter.]

Ms. MITCHELL. The remedial order as originally drafted was an asinine piece of legislation with the exception to the statements regarding the educational components, which has done little more than enhance the very problems the original plaintiffs sought to ameliorate.

[Applause.]

Ms. MITCHELL. I am tired of being made to feel guilty by the progenitors of failed civil rights agendas because of my determination that certain liberal social agendas are nothing more than a batch of Federal fund pimping, Government antipoverty agendas put forth by those individuals who have prostituted the masses of black families under the aegis of a civil rights agenda that has serviced only the needs of special interests and nonauthentic black leadership.

[Applause.]

Ms. MITCHELL. The notion that social integration is the goal of every black person in America is erroneous. I just do not believe that the average black person gets up in the morning thinking about integration. I do think that economic desegregation is a focal point of the black community. Economically desegregating opportunity is a serious approach. Desegregate the banks and the housing institutions, desegregate the employment industry where racism is so pervasive. I have said time and again, bus the money, honey.

[Applause.]

Ms. MITCHELL. I suggested at a prior hearing that if you absolutely must bus my children, please bus them to the Jewish schools, where they "educate" children.

[Applause.]

Ms. MITCHELL. People often ask my feelings on vouchers and privatization. They wonder how would I as a potential board member vote, to which I reiterate that it matters not what I or the board or the teachers want or think, it is the question shall the courts have the legal authority to supersede the rights of the parent by forcibly imposing a remedy that parents clearly do not want.

[Applause.]

Ms. MITCHELL. The parents have privatized this district by attrition—they left! As a colleague of mine said, "they voted with their feet." "The district," he continued, "is apparently selling a product that no one wants to buy." The parents have vetoed desegregation and that is the only thing that matters.

The other significant piece is that these children do not belong to the attorneys, the unions, the district, the State or the courts, they belong to the parents, they belong to us. It clearly boils down to the rights of the parents which have been derided and usurped by those special interests who, as some have stated, have been living large while "sucking slop from the desegregation trough." Some of the very individuals who do not want to free the slaves would die and go to hell before they would place their own children in these inferior schools, but would sue the parents of the slaves to ensure that our children are legally consigned to mediocrity. Who will you sue, the parents who don't think that this district is fit to educate their children? Unless imperative measures are put in place that will abolish desegregation nationwide and address the

issue of equitable and adequate funding as well as educational quality and protecting parent choice, the human infrastructure of this country will collapse. The wealthy have had parent choice and vouchers for a very long time. It's called cash money.

I also propose the development of several busing magnet schools for the benefit of our resident integration-mad negroes to help protect their civil rights because my priority is education, not defined by the Federal courts or the civil rights attorneys whose children attend marvelous private schools with income derived from my child's misery, which they have so accommodatingly facilitated.

Most of the people making decisions about the manner and place in which our children will be educated don't even live in Cleveland, yet they know so well what's best for us. The remedial order clearly states that the special slave master shall ensure that all Cleveland City schools meet and maintain state minimum standards. What an absolutely ludicrous objective to cosign on, and I cite page 99 of the remedial order, over 30,000 parents signed petitions some years ago to have the practice abolished. It fell on deaf ears. In our attempt to focus on unrealistic and punitive measures, we have strategically derided our primary objective to create a top notch education system for every child in this city. We have failed to look at the socioeconomic dynamics which have commensurately contributed to the deterioration of the family as an institution, perpetrated via economic and political racism which is structural and institutionalized, of which desegregation is one.

We have undertaken very silly and superficial approaches to very serious problems that are impacting the black community. We have, in the black community been placed at a serious disadvantage because we have been censored. Black women's voices and solutions have been determined by those who do not speak for us. Black women have some very important messages for this world and our voices must be heard.

[Applause.]

Ms. MITCHELL. If it takes white men to facilitate that forum, then so be it.

These are the children who have been referred to by the Cleveland teachers' union president as fecal matter, and you know what that is, locked in a political quagmire whose demise must be swift.

We here in America are warehousing black and poor children in facilities that look worse than prisons, then have the audacity to blame them for their own failure. Columbus mayoral candidate Bill Moss talks candidly about the many dimensions of desegregation as a failed social policy in his book "School Desegregation, Enough Is Enough." Dr. Anyim Palmer spoke in Cleveland last January on the destruction of the black child through public education when the Black Women's Center posed the question, Are the public schools pimping black children?" State Assemblywoman Polly Annette Williams spoke here in Cleveland at the invitation of Councilwoman Fanny Lewis, where she delineated the busing nightmare and its detrimental impact on black children, yet the buses continue to roll. Long bus rides, long waiting periods and rides that have sometimes resulted in injury or death is too high a price for our children to pay.

[Applause.]

Ms. MITCHELL. It is the means that fails to justify the end and has caused great pain and suffering for too many parents and children. If perhaps there were something significant at the end of that bus ride, I would feel somewhat different. But educating black children has not, nor is it now, the objective of this ruse. We need comprehensive changes in the system. We need to build new neighborhood schools. We need to refurbish existing structures that are structurally sound. We need comprehensive sports and arts programs made available for every child in this system. We also need programs that are rooted in the technologies of the future so that we can create a globally competitive work force. We need enhanced parent involvement initiatives put in place that are functional and strong extracurricular activities programs for all children, not merely a select few.

We need post-secondary parent education initiatives developed and organized in conjunction with the various colleges and university programs and media networks to communicate the message that we are changing the paradigms that govern education to "a total family focus." We have got work to do.

Something is extremely wrong when the parent has to write the President of the United States to get their child on a schoolbus. When because of administrative ineptness and malfeasance the parent is subjected the scrutiny of a truant officer and threatened with legal prosecution for defying a court order violated by the district. My fear is that the next judicial remedy will be a mandate that by the year 2000 every white family in the State of Ohio must have at least one black person living with them. Although teetering on the absurd, it remains no more absurd than the comedy of horrors which have detailed public schools and destroyed the educational futures of generations of black children while padding the pockets of special interests at our expense.

Judge Krupansky said that the court should have been out of this case 5 years ago. When will we be free?

[Applause.]

Ms. MITCHELL. We seek unitary status, immediate relief from the remedial order, adequate and equitable funding for all schools, exploration of parent choice as a remedy and restitution, parents' rights constitutionally protected to ensure that they cannot be usurped by courts, attorneys and special interests, academic and financial restitutions to the victims of this nightmare, autonomy, neighborhood schools and community control, validating home schools, independent schools, parochial, private and community schools as viable options, constitutionally protected by right of the parent, and able to be funded, community monitoring boards to address oversight and more diverse representation of community constituents on local boards with decisionmaking power over budgets and allocations, hiring decisions and accountability.

May desegregation be swiftly and completely abolished forever. Thank you for your time.

[Applause.]

[The prepared statement of Ms. Mitchell follows:]

PREPARED STATEMENT OF GENEVIEVE MITCHELL, EXECUTIVE DIRECTOR, BLACK WOMEN'S CENTER

Mr. Chairman, members of the Committee, my name is Genevieve Mitchell and I am the Executive Director of the Black Women's Center.

I'd like to take this opportunity to thank Congressman Martin R. Hoke of Ohio, your colleagues from Congress, and Joyce Haws of the National Association for Neighborhood Schools for providing me with the opportunity to speak at this forum today.

I am a resident of the City of Cleveland, candidate for the Cleveland Board of Education and most importantly a parent of three students of the Cleveland public school system.

It is the latter of those three statements which warrants my comments today, and more specifically, the manner in which the desegregation initiative is adversely impacting the educational futures of Black children.

Under the aegis of this failed social experiment we have for 20 years witnessed the most malicious mechanism ever put forth under the pretense of integration to ameliorate segregation. This mechanism, legally erected and politically mandated at the federal court level represents in my estimation, the most heinous and politically invasive process ever initiated, to undermine quality education for all children who utilize the public education system, urban communities nationwide.

In Cleveland, desegregation represents a 1 billion dollar taxpayer investment, which has facilitated the exodus of over 80% of this cities families and children. It has facilitated the economic bankruptcy of this public school system, the curriculum deterioration of quality programs and services, imposed misery and profound hardship on the parents of the "most vunerable" of all victims, our children and has strategically destroyed any possibility of creating a fair and equitable education system.

Excluding perhaps, magnet programs, the overall depletion of teaching and support staff, competitive academic programs and sports and extracurricular activities have been pared down to the barest minimums, while at the same time the transportation for profit agenda has exacerbated.

Black children's educational futures have essentially been prostituted and mortaged in the most heinous manner and as a parent and a Black woman, I can no longer sit by and watch this, and do nothing.

Structurally, busing has destroyed good schools, obliterated effective parent involvement, and forced Black children to be bused out of their communities to predominantly Black schools.

It has placed parents in the ridiculous predicament of having to request "special transfer" to have our children sent to school "around the corner." It has facilitated the redistricting of neighborhood schools, enabling them to be usurped for magnet programs, where small groups of students are bused to what Jonathan Kozol, (author of "Savage Inequalities") described as private schools, operating under the auspice of the public school system designed to deter the flight of parents who wished to circumvent court ordered busing. It has fostered a wicked kind of inner competitive animosity by implementation of the "school within a school concept" where "Brave New World" stratification methods are implemented. Some have attributed the brutal stabbing of young Paul Wallace at Mooney Jr. High to this practice.

The "busing nightmare" has left poor Black children walking long unnecessary distances to schools outside their neighborhoods, and facilitated repeated and unnecessary school reassignments to justify race ratios. Of course, with the overall depletion of white student enrollments, I'd imagine the busing proponents will have to resort to kidnapping white children to maintain the practice.

The Remedial Order as originally drafted was an asinine piece of legislation which has done little more than enhance the very problems the original plaintiffs sought to ameliorate.

I am tired of being made to feel guilty by the progenitors of failed civil rights agendas, because of my determination that certain liberal social agendas are nothing more than a batch of federal fund pimping government anti-poverty agendas put forth by those individuals who have prostituted the masses of Black families under the aegis of a civil rights agenda that has serviced only the needs of special interest and non-authentic Black leadership.

The notion that social integration is the goal of every Black person in America, is erroneous. I just don't believe that the average Black person gets up in the morning thinking about integration.

I think that "economic desegregation" is a focal point of the Black community. Economically of segregating opportunity is a serious approach. Desegregate the banks and the housing institutions. Desegregate the employment industry where racism is so pervasive.

I have said time and again, "bus the Money, honey!"

I suggested at a prior hearing that if you absolutely must bus my children, please bus them to the Jewish schools, where they "educate" children.

People often ask my feelings on vouchers and privatization. They wonder how would I as a potential Board member vote, to which I reiterate that it matters not what I, or the Board or the teachers want or think, it is the questions, "Shall the courts have the legal authority to supersede the rights of the Parent by forcibly imposing a remedy that parents clearly, do not want?"

The parents have privatized this District by attrition . . . they left! As a colleague of mine said, "They voted with their feet." The District, he continued, "is apparently selling a product that no one wants to buy!" The parents have vetoed desegregation and that's the only thing that matters!

The other significant piece is that these children do not belong to the attorneys, the unions, the District, the state or the courts, they belong to the parents, they belong to us!

It clearly boils down to the rights of the parents which have been derided and usurped by those special interests who as some have stated, have been living large while sucking slop from the desegregation trough.

Some of the very individuals who don't want to free the slaves, would die and go to hell before they would place their own children in these inferior schools . . . but, would sue the parents of the slaves to insure that our children are legally consigned to mediocrity. Who will you sue, the parents who don't think you're fit to educate their children?

Unless imperative measures are put in place that will abolish desegregation nationwide and address the issue of equitable and adequate funding as well as protecting parents' choice, the human infrastructure of this country will collapse. The wealthy have had vouchers for a long time, it's called cash money.

I also proposed the development of several busing magnet schools for the benefit of our "integration mad negroes" to kelp protect their civil rights, because my priority is education, not defined by the Federal Courts or the Civil Rights attorneys whose children attend marvelous private schools with income derived from my child's misery which they have so accommodatingly facilitated.

Most of the people making decision about the manner and place in which our children will be educated, don't even live in Cleveland. Yet they know so well what's best for us!

The Remedial Order clearly states that the Special "slave" Master shall insure that all Cleveland City Schools, ". . . meet and maintain State Minimum Standards." What an absolutely ludicrous objective to co-sign on. (Pg. 99, Remedial Order, Cite.)

Over 30,000 parents signed petitions some years ago to have the practice abolished, it fell on deaf ears.

In our attempt to focus on unrealistic and punitive measures, we have strategically derided our primary objective to create top notch education system for every child.

We have failed to look at the socio-economic dynamics which have commensurately contributed to the deterioration of the family as an institution, perpetrated via economic and political racism which is structural and institutionalized, of which desegregation is one.

We have undertaken very "silly" and "superficial" approaches to very serious problems, that are impacting the Black community.

We have, in the Black community been placed at a serious disadvantage because we have been censored, Black women's voices and solutions have been determined by those who, do not speak for us.

Black women have some important messages for this world, and our voices must be heard!

If it takes white men to facilitate that forum, then, so be it!

These are the children who have been referred to as . . . "fecal matter" (and you know what that is) locked in a political quagmire whose demise must be swift.

We, here in America, are warehousing Black and poor children in facilities that look worse than prisons. Then have the audacity to blame them for their own failure.

Columbus mayoral candidate, Bill Moss, talks candidly about the many dimensions of desegregation as a failed social policy in his book, "School Desegregation: Enough is Enough," Dr. Anyim Palmer, spoke in Cleveland last January on the "Destruction of the Black Child Through Public Educations" when the Black Women's Center posed the question, "Are the Public Schools Pimping Black Children?"

State Assemblywoman, Polly Annette Williams, spoke here in Cleveland at the invitation of Councilwoman Fannie Lewis, where she delineated the "busing nightmare" and its detrimental impact on Black children, yet the buses continue to roll.

Long bus rides, long waiting periods, and rides that have sometimes resulted in injury or death, is too high a price for our children to pay. It is a means that fails to justify the end, and has caused great pain and suffering for too many parents and children.

If there were something significant at the end of that ride then perhaps, I'd feel somewhat different, but educating Black children has not, nor is it now the objective of this ruse.

We need comprehensive changes in the system. We need to build new neighborhood schools. We need to refurbish existing structures that are structurally sound. We need comprehensive sports and arts programs made available for every child in the system.

We also need, programs that are rooted in technologies of the future, so that we can create a globally competitive work force.

We need enhanced parent involvement initiatives put in place that are functional, strong extracurricular activities programs for all children, not merely a select few.

We need post secondary parent education initiatives developed and organized in conjunction with the various college and university programs and media networks to communicate the message that we are changing the paradigms that govern education to a total family focus.

We've got work to do.

Something is extremely wrong when the parent has to write the President of the United States to get their child on a schoolbus; when because of administrative ineptness and malfeasence the parent is subjected to the scrutiny of the truant officer and threatened with legal prosecution for defying a court order violated by the District!

My fear is that the next judicial remedy will be a mandate that by the year 2000, every white family in the State of Ohio must have at least one Black person living with them.

Although teetering on the absurd, it remains no more absurd than the comedy of horrors which have derailed public schools and destroyed the educational futures of generations of Black children while padding the pockets of special interest at our expense.

Judge Krupansky said that the Courts should have been out of this case 5 years ago, when will we be freed?

We seek: unitary status, immediate relief from the Remedial Order, adequate and equitable funding for all schools, exploration of parent choice as a remedy and restitution, parents rights constitutionally protected to insure that they cannot be usurped by courts, attorneys and special interests, academic and financial restitution to the victims this nightmare, autonomy, neighborhood schools and community control, validating home schools, independent schools, parochial, private and community schools as viable options, constitutionally protected by right of the parent and able to be funded, community monitoring boards to address oversight, and more diverse representation of community constituents on local school boards with decision making power over budgets and allocations, hiring decisions, accountability.

May desegregation be swiftly and completely abolished, forever!

Thank you for your time.

Mr. CANADY. Thank you very much for your testimony. Ms. Haws.

STATEMENT OF JOYCE HAWS, COMMUNICATIONS DIRECTOR, NATIONAL ASSOCIATION OF NEIGHBORHOOD SCHOOLS

Ms. HAWS. I would also like to thank this committee for appearing here today to hear us, and I want to thank Congressman Hoke for responding to not only the desires of the people in this community, but for responding to what is a crucial question all over this Nation.

The court order obviously did not provide equal opportunity in this city or anywhere, nor did it end the deliberate assignment of students by race. On the contrary, the court order required deliberate racial assignment and exclusion from schools, to achieve and maintain racial quotas.

A classic example appeared in a recent newspaper advertisement for 12 magnet school programs here. Ten of the 12 programs being advertised excluded black students from applying. Their presence, you see, would disturb the prescribed racial makeup. Yet this blatant racial discrimination is called a remedy.

The court order began and continues a vicious, steady spiral downhill. Before forced busing, 75 percent of Cleveland public school students graduated. Today the figure is 26.6 percent. The school system's tax base was destroyed as thousands fled to private education, to suburbs, to private schooling, home schooling or simply dropped out. School enrollment is now half what it was before the court order.

What happens when you lose half your school population and your tax base and disgusted citizens who have lost all confidence in the school system and the so-called remedial action refused to pass levies? Schools fall into disrepair. Many Cleveland schools have been closed and the court has ordered more to be closed. Students who attended them are bused somewhere else, creating still more resentment and anger.

The cost required to carry out such court orders is astronomical. Since 1983, the cost to the State of Ohio for forced busing in Cleveland, Cincinnati, Columbus, Dayton, and Lorain has been $566,695,443. Since total costs are shared by districts and the State, this figure represents only about half the cost in Ohio. Multiply by two and you get over a billion dollars spent in the last 13 years. I have, by the way, the documentation for this which I can leave with you. It was not attached to my testimony per se.

The local cost in Cleveland has been over $30 million each year. That kind of money would have kept a lot of neighborhood schools open and in good repair and bought a lot of books and equipment.

As director of the communications office for the National Association for Neighborhood Schools, an organization that has worked since 1976 for neighborhood schools and for the freedom to attend them, I have to emphasize here that Cleveland is not unique.

In New Castle County, DE, Judge Murray Schwartz eliminated 11 school districts, merging them into 1 and students are still bused all over northern New Castle County, even though the district was recently released, by the way.

In Boston, Judge Arthur Garrity's takeover devastated that school system. The devastation continues. In Denver, CO, the judge refused to release the district for many years because of an amendment to the State constitution, passed overwhelmingly by the people of Colorado in 1974, which forbid the practice of assignment by race to schools. That district was fortunately finally released last Monday, by the way. A lot of things happen that we never hear of in our newspapers in this city. In Kansas City, Judge Russell Clark ordered taxation without representation, both property tax and income tax, to pay for his elaborate and grossly expensive scheme to lure white bodies in from suburbs. It did not work. I could go on and on and on, and time does not permit that, but the reaction of the public to devastating court orders is everywhere the same.

One of the plaintiff attorneys in the Cleveland case recently said, "This is not a parental choice lawsuit." Well heavens, is that not what it started out to be—to provide for what the parents needed

and wanted for their children? He went on to say, "This is a desegregation lawsuit." There is a vast world of difference between desegregation and racial balancing by the way too. To him, desegregation obviously means racially balancing schools. To most parents and students, however, desegregation means the freedom to attend schools without being excluded by race, which was the intent of the landmark *Brown* v. *Board of Education* decision.

When our organization collected the petitions of over 30,000 Clevelanders demanding that the school board immediately seek release from the court in 1988, these petitions of the citizens were called "so much toilet paper" and State and local officials—and there were many who joined our effort—were threatened with "the awesome power of the Federal court." And that really is what this is all about, the awesome power of the Federal court.

Obviously, if the law and the courts do not protect the rights and freedoms of the citizens, regardless of race, color or nationality, but rather allow social engineers to implement what they decide is best for us and what is best for them politically, financially and egotistically, then something has gone very far astray and must be corrected.

When Judge Krupansky took over the Cleveland case, he announced that if any State law would impede implementation of his orders, such law was held to be inapplicable. Now the judge has stripped all power from the elected Cleveland School Board, turning the system over to the State. My point is this, even if the judge were wisdom incarnated and even if he were totally right in his assessment of the inadequacies of the school board, it still is not his role to disenfranchise the public.

[Applause.]

Ms. HAWS. Neither benevolent nor malevolent dictatorship has a place in our form of government.

[Applause.]

Ms. HAWS. The judicial activism of which we complain, by the way, extends far beyond desegregation cases, and I will not go into that, but it is part of my testimony that was given to you in writing.

We realize that limiting the Federal courts will not stop State and local authorities from embarking on their own racial balancing schemes. An example is the racial balancing incorporated in Vision 21, the reorganization plan which was approved by the Cleveland School Board and is now a part of the consent decree. Many school districts not under court orders are practicing racial balancing schemes.

However, we do feel that the threat of Federal court action being removed, the people working through our State legislators and State constitutions as well as locally, can bring an end to such racial control by locking the language of the 1964 Civil Rights Act into State law or amending their State constitutions; and we feel that then sound educational systems that are not racially discriminatory can then be achieved.

Court remedial orders in cases of actual deliberate segregation and racially discriminatory practices are applauded by most people, but only if those orders are limited to those that actually end the

offensive practices and achieve the freedom of access to schools, programs, facilities and equipment without regard to race.

Congress does have the authority under article III of the U.S. Constitution to remove or limit judicial power. And this has been brought up as a question by many people. Furthermore, Congress has done so in the past when necessary. I have a list of six times here in my packet that they have done so, one as recent as 1948. That does not sound very recent, but it has been done. This is one of the checks and balances in our Government intended to prevent any of the three Federal branches from building inordinate power. Even the Supreme Court itself has acknowledged this congressional authority on numerous occasions. And Congress also has the power to make the laws necessary and proper to carry out this authority.

Recent Supreme Court decisions, especially the most recent one in which Judge Thomas' remarks were quoted here a few minutes ago, show a realization that Court action has gone too far. But those decisions have been often by a narrow 5 to 4 vote and have left too many foggy areas to deal with, meaning that years of continued court battles could go on as districts attempt to gain release based on those decisions, and the back and forth in-fighting over that. Also, a change of one swing vote or a new appointment to the Court could put us back to square one.

So long as this Nation is subject to lawmaking by five unelected men and women—a majority in other words of Supreme Court justices—and by appointed district judges who trample laws made by the people if they are in the way of their decrees, we are in trouble.

It is time for court-limiting legislation to end this mockery of justice.

And again, we thank you for hearing us.

[Applause.]

[The prepared statement of Ms. Haws follows:]

PREPARED STATEMENT OF JOYCE HAWS, COMMUNICATIONS DIRECTOR, NATIONAL ASSOCIATION OF NEIGHBORHOOD SCHOOLS

Members of our Cleveland area affiliate of the National Association for Neighborhood Schools met with Congressman Hoke last December to discuss what Congress could do to bring an end to a practice that has devastated our school system and our city.

We express appreciation to Congressman Hoke for his response on this matter of utmost concern to not only his constituents here, but to the nation as a whole and we thank members of the committee who have traveled here today to hear testimony.

Cleveland was found guilty of operating a segregated school system. Things had been done deliberately to keep black students in certain schools and there were instances that facilities, equipment etc. in predominantly black schools was not of the quality as those in white schools. Such discriminatory actions were, and are, absolutely wrong.

But—the court order in Cleveland did not provide equal opportunity nor did it end the deliberate assignment to schools and exclusion from schools on the basis of race, color or nationality.

On the contrary the court order required deliberate racial assignment and exclusion to achieve and maintain racial quotas in nearly every school-related situation.

Neither did the court order provide equal opportunity. A classic example appeared in a recent newspaper advertisement for 12 magnet school programs. Ten of the twelve programs being advertised excluded black students from applying. Their presence, you see, would disturb the prescribed racial makeup of these programs. Yet, this blatant racial discrimination is called a "remedy" for past discrimination.

The court order began, and continues, a vicious, steady downhill spiral. Before forced busing 75% of Cleveland public school students graduated. Today the figure

is 26.6%. The school system lost its tax base as thousands fled to private education, to suburbs, to home schooling, or simply dropped out. School enrollment is now only half of what it was before the court order. The result of this continuing exodus from Cleveland by those financially able to escape is a city in which a large portion of students remaining in Cleveland public schools are from families with limited financial resources. The end result is decaying neighborhoods.

Discipline problems have soared. Parental involvement took a nosedive. Parents simply cannot spread themselves all over Cleveland. However, gang activity and drug peddling was spread all over Cleveland. Absenteeism increased drastically. Children were subjected to daily dangers on buses and in schools where other students did not welcome them. Gone was the feeling of belonging and community pride in the neighborhood schools that had been vital hubs of our communities. The hours wasted on buses curtailed participation in outside activities, family activities, and part-time jobs for older students. We have had calls from parents describing how their families had split up—fathers staying in Cleveland to work while mothers took the children and moved in with grandparents and other relatives in other towns where children could go to schools close to where they lived. Some gave guardianship of their children over to relatives.

What happens when you lose half your school population and your tax base and disgusted citizens who have lost all confidence in the school system and the so-called remedial action refuse to pass levies? Schools fell into disrepair. Many have been closed, and the court has ordered more to be closed. Students who attended them are bused somewhere else, creating still more resentment and anger.

The cost required to carry out the court orders is astronomical. Since 1983 the cost to the state of Ohio for forced busing in Cleveland, Cincinnati, Columbus, Dayton and Lorain has been $562,204,247. Attorney fees have cost the state $4,489,197 for a total cost to the state of $566,695,443. Since total costs are shared by local districts and the state, this figure represents only about half the cost in Ohio. Multiply by two and you get over a billion dollars spent in the last 13 years that can be accounted for. The local cost in Cleveland has been over $30 million each year. We maintain that there are many additional hidden costs. That kind of money would have kept a lot of neighborhood schools open and in good repair and bought a lot of books and equipment.

Almost daily for nearly two decades parents have relayed horror stories caused by forced busing to us—missed buses, late buses, bus accidents, children lost in neighborhoods far from home, children's fears of going to the restroom, fights, rapes, even murder. Realtors tell us that as soon as families have children approaching school age, they put their homes up for sale.

Teachers tell us that under such chaos and shuffling of bodies and late buses and increased discipline problems and absenteeism, it is miraculous that any learning takes place.

As director of the communications office for a national organization that has worked since 1976 for neighborhood schools and the freedom to attend them, I must emphasize also that Cleveland is not unique.

In Boston, Judge Arthur Garrity's take-over devastated that school system. In New Castle County Delaware Judge Murray Schwartz eliminated eleven school districts, merging them into one, and students were bused all over northern New Castle County. In Denver, Colorado, the judge refused to release the District so long as an amendment to the state constitution forbidding forced busing remained intact. In Kansas City, Judge Russell Clark ordered taxation without representation, to pay for his elaborate and grossly expensive scheme. The list goes on and on, and the reaction of the public is the same.

One of the Plaintiff attorneys in the Cleveland case recently said, "This isn't a parental choice lawsuit. It is a desegregation lawsuit." To him desegregation obviously means racially balancing schools. To parents and students it means freedom to attend them, the intent of the landmark *Brown* v. *Board of Education* decision. When our organization collected the petitions of over 30,000 Clevelanders demanding the school board immediately seek release from the court, these petitions of the citizens were called "so much toilet paper" and local and state elected officials who joined our effort were threatened with "the awesome power of the federal court."

Obviously if the law and the courts do not protect the rights and freedoms of its citizens, regardless of race. color or nationality but rather allow social engineers to implement what they decide is best for us and what is best for them politically, financially and egotistically, then something has a one very far astray and must be corrected.

When Judge Krupansky took over the Cleveland case, he announced that if any state law would impede implementation of his orders, such law was held to be inapplicable. The judge has now stripped all power from the elected Cleveland school

board, turning the system over to the state. Even if the judge were "wisdom incarnate" and totally right in his assessment of inadequacies of the school board. it should not be his role to disenfranchise the public. Neither benevolent nor malevolent dictatorship has a place in our form of government. Four of our seven member school board have therefore resigned.

The judicial activism of which we complain extends far beyond school desegregation cases. Instance after instance could be cited in which the federal judiciary is in effect making representative government obsolete. Indeed one of the most tragic results of forced busing is that citizens have lost faith in their government. They have observed for too many years that those they have elected to school boards, to Congress, or to any elected office, have failed to represent them. Many have simply given up on the political process through which needed changes in the law can and should be made.

We realize that limiting the federal courts will not stop state and local authorities from embarking on their own racial balancing schemes, backed by activist state judges. An example is Cleveland's Consent Decree in place and the racial balance mandates of Vision 21, a total reorganization plan approved by the school board.

However, with the threat of federal court action removed, the people, working through their state legislatures and state constitutions as well as locally, can bring an end to the racial control by locking the language of the 1964 Civil Rights Act into state law and sound educational systems that are not racially discriminatory can be achieved.

Court remedial orders in cases of actual deliberate segregation and racially discriminatory practices are applauded by most people, but only if those orders are limited to those that actually end the offensive practices and achieve the freedom of access to schools and programs and facilities and equipment without regard to race, color or nationality.

Congress does have the authority under Article III of the U.S. Constitution to remove or limit judicial power. Furthermore, Congress has done so in the past when necessary. This is one of the checks and balances in our government intended to prevent any of the three federal branches from building inordinate power. The Supreme Court has itself acknowledged this congressional authority on numerous occasions. And Congress has the power to make all laws necessary and proper to carry out its authority.

Recent Supreme Court decisions show a realization that court action has gone too far. But those decisions have been by a narrow 5-to-4 vote and left too many foggy areas to deal with, meaning years of continued court battles as districts attempt to gain release based on those decisions. A change of one swing vote or a new appointment to the Court could put us back to square one.

So long as this nation is subject to law established by 5 unelected men and women (a majority of the Supreme Court justices), or appointed district judges who trample laws made by the people if they are in the way of their decrees, we are in trouble.

It is time for court-limiting legislation to end this mockery of justice.

Cleveland Public Schools
ANNOUNCE OPENINGS IN SELECTED MAGNET SCHOOLS AND PROGRAMS FOR THE 1995-96 SCHOOL YEAR

A number of openings are available in selected magnet schools and programs for the 1995-96 school year. All magnet schools must maintain a racial enrollment which reflects the district average; the openings listed are spaces for students who will help achieve a culturally diverse student population. Applications are available at all schools. Magnet schools and programs are available for out-of-district students on a space available, tuition basis.

Black students from [illegible] are applying at 10 out of 12 these

ELEMENTARY MAGNET PROGRAMS

H. Longfellow Accelerated Program
.....Kindergarten*, grade 1, 3 and 4 openings for non-black students

K. Clement Foreign Language/International Studies
.....Kindergarten* openings for non-black students

Empire CompuTech
.....Kindergarten*, grade 1, 3 and 4 openings for non-black students

M. Ireland Contemporary Academy (formerly Lafayette)
.....Kindergarten*, grade 1-4 openings for non-black students

J.D. Rockefeller Fundamental Education Center
.....Kindergarten*, grade 1-5 openings for non-black students

*Full-day Kindergarten classes are available only in magnet schools

HIGH SCHOOL MAGNET PROGRAMS

East High Academy of Finance .....Grade 9 non-black openings

East Tech Engineering/Technician ..Grade 9 non-black openings

Cleveland School of Science at East Technical High School**
.....Grade 9-11 black and non-black openings

Collinwood CompuTeach .....Grade 9 non-black openings

John F. Kennedy CompuTech (Communications & Technology)
.....Grade 9 non-black openings

Martin L. King Law and Public Service
.....Grade 9-12 non-black openings

Lincoln-West Foreign Language/International Studies
.....Grade 9 black openings

**Students must score at or above the 50th percentile (stanine 5 or above) on standardized reading and mathematics tests.

TELEPHONE NUMBERS:
Magnet Schools Office (program info.) 574-8696
Bilingual Education 574-8050
Assignment Info. 574-8610
Tuition 574-8248

This precisely discriminatory ad was paid for with our tax dollars. The press is supposed to be a "remedy" for past racial discrimination done by the school board.

STATE OF OHIO DEPARTMENT OF EDUCATION

1983-1995 average per yr 30,704,097

DESEGREGATION EXPENSES

FISCAL YEAR	CINCINNATI	CLEVELAND	COLUMBUS	DAYTON	LORAIN	TOTAL
1983		37,045,305	11,795,763			48,841,068
1984		27,000,000	6,600,108			33,600,108
1985	6,000,000	18,000,000	3,888,497		300,000	28,188,497
1986	6,245,000	18,000,000	4,103,097	6,000,000	250,000	34,598,097
1987	5,000,000	22,027,477	4,369,662	6,000,000	400,000	37,797,139
1988	5,000,000	39,700,000	4,117,887	6,266,778	50,000	55,134,665
1989	6,100,000	25,800,000	3,932,785	6,599,730		42,432,515
1990	5,855,000	29,518,352	2,846,411	4,650,000		42,869,763
1991		30,203,172	1,481,347	4,400,000		36,084,519
1992		27,365,461		4,400,000	2,600,917	34,366,378
1993	10,000,000	27,662,965		3,000,000		40,662,965
1994	5,000,000	*36,830,532		3,000,000	2,400,000	47,230,532
1995	5,000,000	*60,000,000		3,000,000	2,400,000	70,400,000
1996		10,000,000				10,000,000
TOTALS	$54,200,000	$409,153,264	$43,135,557	$47,316,508	$8,400,917	$562,206,246

ATTORNEY FEES

FISCAL YEAR	CINCINNATI	CLEVELAND	COLUMBUS	DAYTON	LORAIN	TOTAL
1983		219,494				219,494
1984		1,045,500	705,000			1,750,500
1985			48,458			48,458
1986	515,868					515,868
1987						- 0 -
1988						- 0 -
1989	27,761				60,078	87,839
1990	163,496					163,496
1991	27,978	103,355			5,475	136,808
1992	87,385	46,876			39,765	174,026
1993	2,069	67,419			23,151	92,639
1994	153,213	196,550				349,763
1995*	10,000	484,066			5,934	500,000
1996*	10,000	375,306			65,000	450,306
TOTALS	$997,770	$2,538,566	$753,458	- 0 -	$199,403	$4,489,197

GRAND TOTAL	$55,197,770	$411,691,830	$43,889,015	$47,316,508	$8,600,320	$566,695,443

*Includes encumbered amounts

93-94

77826182 ÷ 2 = 38,913,091

Schedule A

CLEVELAND PUBLIC SCHOOLS

Desegregation Program Cost Summary

Fiscal year ended June 30, 1994

Desegregation Program Activity	Discussion Reference	Determined by Cleveland Public Schools (Schedule A-1)	Fiscal Year 1993 Encumbrances (A)	Fiscal Year 1993 Accrued Payroll and Benefits (A)	Fiscal Year 1994 Encumbrances (A)	Fiscal Year 1994 Accrued Payroll and Benefits (A)	Proposed Adjustment	Proposed Reclassification	Determined in Accordance with Cost Methodology
Student assignments	A-2	$ 1,115,385	(38,567)	(74,103)	22,601	74,816	(37,684)	–	1,062,448
Testing and tracking	A-3	–	–	–	–	–	–	–	–
Reading programs	A-4	309,505	(9,617)	(27,088)	24,423	19,832	–	15,209,130	15,526,115
Counseling and career guidance	A-5	250,302	(8,763)	(13,336)	5,548	14,123	–	–	247,879
Magnet and vocational schools	A-6	136,287	(1,687)	(9,149)	1,100	9,866	–	–	136,417
Cooperation with universities, business, and cultural institutions	A-7	123,971	–	(7,925)	170	8,827	–	369,962	495,005
Extracurricular activities	A-8	548,104	(10,431)	(25,155)	44,322	25,092	(1,468,157)	2,763,338	1,877,113
Staff development and student training in human relations	A-9	482,600	(64,744)	(51,999)	27,508	49,532	–	–	442,897
Student rights	A-10	–	–	–	–	–	88,695	–	88,695
School-community relations	A-11	1,005,626	(28,185)	(48,088)	90,353	54,118	(132,874)	16,846	957,796
Transportation	A-12	30,869,979(B)	(1,600,189)	(1,347,516)	1,630,734	1,341,159	(3,818,943)	(471)	27,074,753
Safety and security	A-13	2,932,501	(75,130)	(159,930)	51,033	179,209	(2,233,040)(D)	2,603,271	3,317,914
Management and finance	A-14	33,734,536(C)	(7,756,012)	(2,007,795)	4,799,729	2,982,174	(3,721,218)(D)	(20,962,076)	7,069,298
Overhead expenditures	A-15	–	–	–	–	–	1,663,477	–	1,663,477
Vision 21 allocation									
Fund 72	A-16	6,297,386	–	–	1,498,405	930,684	–	–	8,726,475
All other funds	A-16	–	–	–	–	–	14,922,414	–	14,922,414
Total cost		77,826,187	(9,593,435)	(3,772,084)	8,195,926	5,689,432	5,262,670	–	83,608,696
Reimbursements									
State vehicle operating subsidy	A-12	5,573,207	–	–	–	–	(900,630)	–	4,672,577
Emotionally and mentally retarded transportation subsidy (EMR)	A-12	3,382,305	–	–	–	–	(793,600)	–	2,588,705
State subsidy for school bus purchases	A-12	801,682	–	–	–	–	(192,404)	–	609,278
Total reimbursement		9,757,194 (E)	–	–	–	–	(1,886,634)	–	7,870,560
Total cost less reimbursement		$ 68,068,993	(9,593,435)	(3,772,084)	8,195,926	5,689,432	7,149,304	–	75,738,136

(A) Encumbrances and accrued payroll include only those in Funds 12, 16, and 72, all other funds' encumbrances and accrued payroll are included in "Proposed Adjustment."

(B) Consists of the following:

Fund 12 – Operating	$ 29,817,449
Fund 16 – Capital	1,052,530
Total	$ 30,869,979

(C) Consists of the following:

Fund 12 – Operating	$ 33,676,587
Fund 16 – Capital	57,949
Total	$ 33,734,536

(D) Includes State-proposed adjustments for safety and security officers and attendance officers; see Schedules A-13 and A-14, respectively, for a discussion of these adjustments.

(E) Source: Ohio Department of Education and CPS administration; amount equals subsidies paid during that period.

STOP FORCED BUSING

National Association for Neighborhood Schools, Inc.

Making Congress Stop Busing By Simple Majority Legislation

It is the position of the National Association for Neighborhood Schools that Congress, under the Constitution and without resorting to a constitutional amendment, has the clear power to stop forced busing - the assignment of children to schools in order to achieve racial balance or "correct" racial imbalance supposedly brought about by "constitutional violations".

It is universally accepted that forced busing can be stopped by the cumbersome process of amending the Constitution. However, it is our position that Congress, using its law-making powers under Article I and elsewhere in the Constitution and given its power to "check" the federal courts under Article III, Section 2, can stop federally-coerced racial balancing schemes by simple majority vote legislation and the signature of a willing President.

It goes almost without saying that Congress, through its given Constitutional control on the use of federal funding, can stop other federal departments, such as the Department of Justice and the Department of Education, from coercing school districts into racial balance or seeking busing orders in court. This essay will deal with stopping the federal judiciary.

It is correctly argued that, short of a constitutional amendment, acts of Congress to stop busing such as removal of federal court jurisdiction to order such "remedies" will not stop state and local authorities from embarking on their own racial balancing schemes, backed by activist state judges emulating their federal brethren. We submit, however, that, **with the threat of federal court action removed,** the people, working through their state legislatures and state constitutions, can stop busing brought on by such state and local authorities. First, the power of the federal courts to order busing must be extinguished, for it is this specter that is used by state and local authorities for their "voluntary compliance" initiatives.

Thus, although NANS will continue to push for an amendment to the U.S. Constitution banning forced busing brought on by all levels of government, our intention is to stop the federal courts on the issue, ending, in the process, all busing orders already in place, by simple majority legislation passed by Congress and signed into law by the President. Then, with the authority of the federal courts to order busing removed, the republican form of government envisioned by the Founding Fathers can manifest itself at the state and local levels.

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Article III of the Constitution

The basis for removing or limiting judicial power was provided by the Founding Fathers in Article III of the Constitution. In Section 1 of that article, the Constitution provides that the judicial power is vested in one Supreme Court and in such inferior courts as Congress may establish (e.g., Circuit Courts of Appeal and District Courts). In Section 2, the Constitution declares that the Supreme Court shall have appellate jurisdiction in law and in fact **but with such exceptions and regulations which Congress might make.**

Legal scholar Charles E. Rice of the Notre Dame Law School, pointing out that this Congressional power by extension, also applies to lower federal courts, has written (*"Congress and Supreme Court Jurisdiction"*, Washington, D.C., The American Family Institute, 1980, p. 2):

> There is no question but that Congress has the power to define entirely the jurisdiction of lower federal courts . . The Congressional power to ordain and establish inferior courts includes the power of "investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good " Examples of Congress' exercise of its power to withdraw particular subjects from the jurisdiction of lower federal courts are the Norris-La Guardia Act of 1932, which withdrew from federal courts jurisdiction to issue injunctions in labor disputes, and the Emergency Price Control Act of 1942, which withdrew from federal courts jurisdiction over certain civil actions.

Prof. Rice quotes from *Lockerty v. Phillips, United States Attorney, 319 U.S. 182, 187*, decided in 1943.

The provision quoted in Article III, Section 2 was included by the Framers as one of the checks and balances intended to prevent any of the three federal branches from building inordinate power, as the courts have done. As Alexander Hamilton, who was actually a proponent of Supreme Court power, explained in the *Federalist, No. 81*, the provision was intended to give "the national legislature. . . ample authority to make such exceptions, and to prescribe such regulations as will be calculated to obviate or remove" the "inconveniences" that could result from powers in the Constitution given to the federal judiciary.

The same Chief Justice John Marshall who, in his ruling in *Marbury v. Madison* in 1803 helped invent the prevailing doctrine of judicial supremacy that has brought about the situation we are in today, so broadly interpreted the provision of Article III, Section 2 in other decisions that the Court was held to have no jurisdiction on any matter unless that jurisdiction was expressly granted by Congress.

In the 1805 case of *United States v. More, 7 U.S. (3 Cranch), 159 170-171*, the Marshall Court said.

> When the Constitution has given Congress the power to limit the exercise of our jurisdiction and to make regulations respecting its exercise, and Congress under that power has proceeded to erect inferior courts, and has said in what cases a writ or error or appeal shall lie, an exception of all other cases is implied And this court is as much bound by an implied as an expressed exception.

In the 1810 case of *Durousseau v. United States, 10 U.S. (6 Cranch) 307, 314*, the Court said:

> The appellate powers of this Court are not given by the Judicial Act, they are given by the Constitution But they are limited and regulated by the Judicial Act and by such other acts as have been passed on the subject

In the case of *Ex parte McCardle, 74 U.S. (7 Wall.) 514*, the Supreme Court promptly dismissed the case for want of jurisdiction, which had been removed when Congress deliberately repealed the Act giving Court jurisdiction to hear McCardle's case on appeal. Speaking for a unanimous Court, Chief Justice Chase declared in 1868:

> We are not at liberty in inquire into the motives of the legislature. We can only examine its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this Court is given by express words . . Without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the case

In the case of *Francis Wright, 105 U.S. 381 (1882)*, the Court observed in plain language:

> While the appellate power of this Court extends to all cases within the judicial power of the United States, actual jurisdiction is confined within such limits as Congress sees fit to describe. What these powers shall be, and to what extent they shall be exercised, are, and always have been, proper subjects of legislative control

And of more recent vintage, just prior to the time the Supreme Court moved stridently to completely take over our government, it said in the case of *National Mutual Ins. Co. v. Tidewater Transfer Co., 377 U.S. 582, 655 (1948)*:

> Congress need not give this Court any appellate power; it may withdraw appellate jurisdiction once conferred and it may do so even while a case is *subjudice* (that is, after hearings have begun).

It is obvious then, though by no means used on a routine basis, the "exceptions" provision has been employed periodically by Congress and that the Supreme Court, on a number of occasions, beginning in the early days of the Republic and continuing down to modern times, has admitted to this power of Congress. And the Constitution has not changed in this respect since the last time Congress had the courage to use the provision. It's only a matter of "dusting it off".

Speaking at hearings held by the Ohio GOP Task Force on the Excessive Power of Federal Judges in Columbus, Ohio in May, 1980, renowned constitutional scholar Raoul Berger said that a constitutional amendment is not necessary to stop busing and to claim an amendment is needed supports the mistaken theory that the Constitution requires busing. Congress should act, said Berger, under its authority in Article III, Section 2 to remove school desegregation from the jurisdiction of the courts. Indeed, said Berger, no jurisdiction has been given to the courts on busing. If the Court should declare such jurisdiction-removing legislation "unconstitutional", Berger states emphatically that Congress "must attack the Court by impeachment".

During recent years, legislation removing federal court jurisdiction on busing has been introduced in Congress. In 1976, bills introduced by Sen. William Scott (R-Va.) and Sen. William V. Roth, Jr. (R-De.) were defeated on the Senate floor (in April, 1979, similar legislation sponsored by Sen. Jesse Helms (R-N.C.) removing court jurisdiction on prayer in public schools actually passed the Senate before dying in House committee). Congressman Lawrence P. McDonald (D-Ga.) has consistently introduced such legislation in the House only to have it die in committee. In 1979, Congressman John M. Ashbrook (R-Ohio) introduced his H.R. 1180, which read simply:

> No court of the United States shall have jurisdiction to require the attendance at a particular school of any student because of race, color, creed, or sex

The Ashbrook measure also died in the liberal and pro-busing dominated House Judiciary Committee. In February, 1981, Congressman Ashbrook reintroduced his H.R. 1180 (capturing the same bill number) in the 97th Congress.

The Discharge Petition

Anti-busing legislation need not lie buried in committee. In the House of Representatives, a mechanism called a discharge petition can be used to force legislation from a hostile committee and on to the floor for a roll call. When the discharge petition accumulates the signatures of 218 of the 435 House members, the bill is forced from committee. It was by this method that Congressman Ron Mottl (D-Ohio), with the help of nation-wide grass roots citizen pressure by NANS, brought his anti-busing and pro-neighborhood school constitutional amendment to the House floor in July, 1979. Although the Mottl Amendment failed on the floor, the point had been proven. The anti-busing movement can bring meaningful legislation to the floor where elected representatives can be pressured into voting for it. And with a more conservative and responsive legislature, both in the Senate and House (in the Senate, strong anti-busing Sen. Strom Thurmond (R-S.C.), now chairs the Senate Judiciary Committee), we can make Congress confront the federal courts on the busing issue.

The 1964 Civil Rights Act

Article I, Section 8 (18) of the Constitution states clearly that Congress shall have the power "To make all laws which shall become necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department of officer thereof". And, under the Constitution, the Court is a "department" and judges are "officers".

The 1964 Civil Rights Act, in addition to clearly defining "desegregation" as not meaning "the assignment of students to public schools in order to overcome racial imbalance", also states that "Nothing herein contained shall empower any official or court of the United States to issued any order seeking to achive a racial balance in any school by requiring the transportation of pupils. . . in order to achive such racial balance".

The legislative record of the 1964 Act disclosed that the bill's Senate floor manager, Hubert Humphrey, declared, "If the bill were to require (busing) it would be a constitutional violation because it would mean the transportation of children based solely upon their race". Humphrey alluded here to the 1954 Supreme Court *Brown* decision, which declared racial assignments of students to be unconstitutional.

However, with the Congress sitting by watching, the Supreme Court, beginning with its 1969 decision *Swann v. Charlotte-Mecklenberg*, began upholding racial balance busing orders.

In 1974, a liberal and pro-busing Congress dutifully gutted the 1964 Act's anti-busing language, which they had allowed the Court to ignore anyway, by passing the "Scott-Mansfield" amendment to the 1974 Equal Educational Opportunities Act, which stated that the Court could ignore any anti-busing language in the

legislation when "remedying" purported violations of the 5th and 14th Amendments to the Constitution. The Scott-Mansfield language must be repealed. And the submissive posture of the Congress must be changed by the American people.

Congressional action such as the 1964 and 1974 Acts (that is, the anti-busing language of the latter prior to being gutted) are within its powers under Section 5, the "enforcment section", of the 14th Amendment (The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article"). According to Professor Rice, the Congress can certainly use this section to stop forced busing. Congress, which has the authority to dictate "remedies" or penalties for violation of the law, can use this section to dictate or specify the extent of the remedies available for school-related "constitutional violations". In so doing, however, the Congress must be prepared to deal strongly with a judiciary intent on going further than the law as passed by Congress allows.

William D. D'Onofrio, President
National Association for Neighborhood Schools, Inc.
February 23, 1981

Appendix

Excerpts from the U.S Constitution as they apply in the fight against forced busing.

Article I

Section 1 All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and a House of Representatives.

Section 8 The Congress shall have the power

9. To constitute tribunals inferior to the Supreme Court;

18. To make all laws which shall become necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.

Section 9 No money may be drawn from the treasury, but in consequence of appropriations made by law *(Note: Herein lies the power of Congress to prohibit federal funding of given matters).*

Article II

Section 2.2 (The President) shall have power. . . by and with the advice and consent of the Senate (to) appoint. . . judges of the Supreme Court and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.

Article III

Section 1 The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior *(Note: Herein lies the basis for impeachment of federal judges).*

Section 2 The judicial power shall extend to all cases, in law and equity, arising under this Constitution. . . *(Note: The various kinds of cases are then listed).*

2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction. In all other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, **with such exceptions, and under such regulations as the Congress shall make** (emphasis added) *(Note: in the opinion of legal scholars, this latter clause, by extension, applies as concerns inferior federal courts).*

Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which in either case, shall be valid to all intents and purposes, as part of this Constitution when ratified by the legislatures of three fourths of the several States, or by conventions in three fourths thereof, as the one mode or the other of ratification may be proposed by the Congress.

Article VI

2. This Constitution, and the laws of the United States which shall be made in pursuance thereof. . . shall be the supreme law of the land. . .
3. The senators and representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution.

(Thus, Article VI states that it is the Constitution that is supreme, not that judges are supreme. When elected officials allow judges to violate the Constitution, those elected officials violate their own oaths of office.

For a plain language text exposing the doctrine of judicial review (read supremacy) as a legal fiction, the reader is urged to read ***Judicial Supremacy: The Supreme Court on Trial,*** *by Congressman Robert K. Dornan and Csaba Vedlik, Jr., Nordland Publishing International, Inc., 3009 Plumb St., Houston, TX 77005, $5.95.)*

Amendments to the Constitution

The Bill of Rights - the first ten amendments. Ratified Dec. 15, 1791

Article I (The First Amendment)
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Article V (The Fifth Amendment)
No person shall be . . . depnved of life, liberty, or property without due process of law.

Article IX (The Ninth Amendment)
The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Article X (The Tenth Amendment)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively, or to the people *(Note: The Constitution nowhere gives the federal government any powers over education, public or private).*

Amendments After the Bill of Rights

Article XIV (The Fourteenth Amendment) *(Ratified July 9, 1868)*

Section 1 . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 5 The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

(Note. The 14th Amendment was a "locking into the Constitution" of an Act of Congress, the 1866 Civil Rights Act. "Violations" of this Amendment, along with the 5th Amendment, are used by the courts as the rationale to order forced busing.

Perhaps the foremost text refuting the prevailing doctrine surrounding the 14th Amendment is ***Government by Judiciary: The Transformation of the Fourteenth Amendment,*** *by Raoul Berger, Harvard University Press, 1977.*

In it, Prof. Berger exhaustively examines the legislative history and record of both the 1866 Civil Rights Act and the 14th Amendment and proves conclusively that the Framers had no intention for the 14th Amendment to address the problem of segregation.

Instead, the Framers intended the Amendment to address only certain "enumerated rights" for newly freed slaves, such as the right to buy and sell property, the right to enter into contracts, and the right of access to the courts. The 14th Amendment did not even give Negroes the right to vote, which was granted in the 15th Amendment.

The National Asociation for Neighborhood Schools does not oppose desegregation. We are opposed to assignments to schools based on race. It is our position that the Constitution did not address the matter of school segregation, or desegregation, until it did so by an Act of Congress in the form of the 1964 Civil Rights Act. And that Act prohibited the assignment of children based on race or to correct racial imbalance in the schools.)

MORE ON POWER OF CONGRESS TO SET, LIMIT OR DEFINE JURISDICTION (POWER TO DECLARE THE LAW) OF THE FEDERAL COURTS

The power of Congress to affect the entire jurisdiction, both original and appellate, of the lower federal courts is found in Article III section 1 of the U.S. Constitution. The power of Congress to affect the appellate jurisdiction of the U.S. Supreme Court is found in Article III section 2 clause 2 of the Constitution.

Here is what the U.S. Supreme Court had to say about the matter as recently as 1943 - and the Constitution hasn't changed since!

> There is nothing in the Constitution which requires Congress to confer equity jurisdiction on any particular inferior federal courts. All federal courts other than the Supreme Court derive their jurisdiction wholly from the exercise of the authority to 'ordain and establish' inferior courts conferred on Congress by Article III section 1 of the Constitution. Article III left Congress free to establish inferior federal courts or not as it thought appropriate. It could have declined to create any such courts, leaving suitors to the remedies afforded by state courts, with such appellate review by this (Supreme) Court as Congress might prescribe...The Congressional power to ordain and establish inferior courts includes the power of investing them with jurisdiction either limited, concurrent, or exclusive, and of withholding jurisdiction from them in the exact degrees and character which to congress may seem proper for the public good. (emphasis added)
>
> Lockerty vs. Phillips,
> 319 U.S. 182 (1943)

What does all this mean? Forced busing has been brought to Americans under the purported "equity jurisdiction" of lower federal courts (as allowed by Congress) and approved under the appellate jurisdiction of the U.S. Supreme Court (as allowed by Congress). **Congress may thus stop forced busing by removing the jurisdiction of the courts to order it.**

ADDENDUM
EXAMPLES OF OTHER CASES IN WHICH THE SUPREME COURT HAS UPHELD THE POWERS OF CONGRESS UNDER ARTICLE III OF THE CONSTITUTION.

In the 1805 case of United States v. More, 7 U.S. (3 Cranch), 159 170-171, the Marshall Court said:

> **When the Constitution has given Congress the power to limit the exercise of our jurisdiction and to make regulations respecting its exercise, and Congress under that power has proceeded to erect inferior courts, and has said in what cases a writ or error or appeal shall lie, an exception of all other cases is implied. And this court is as much bound by an implied as an expressed exception.**

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> **We are not at liberty in inquire into the motives of the legislature. We can only examine its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of this Court is given by express words...Without jurisdiction the Court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the Court is that of announcing the fact and dismissing the case.**

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And of more recent vintage, just prior to the time the Supsreme Court moved stridently to completely take over our government, it said in the case of National Mutual Ins. Co. v. Tidewater Transfer Co., 377 US. 582, 655 (1948):

> **Congress need not give this Court any appellate power; It may withdraw appellate jurisdiction once conferred and it may do so even while a case is subjudice (that is, after hearings have begun).**

It is obvious then, though by no means used on a routine basis, the "exceptions" provision has been employed periodically by Congress and that the Suspreme Court, on a number of occasions, beginning in the early days of the Republic and continuing down to modern times, has admitted to this power of Congress. And the Constitution has not changed in this respect since the last time Congress had the courage to use the provision. Its only a matter of "dusting it off."

Mr. CANADY. Thank you, Ms. Haws, we appreciate your testimony and we appreciate the testimony of all the witnesses on this panel.

We are going to have some questions of the members of this panel, but before we do that, I will announce that when we are concluded with the questioning of the members of this panel, we will have a brief opportunity for statements by members of the audience. We are limited in our time and so we may not be able to accommodate everyone, but if there will be an opportunity for you to make a brief statement and we would ask that you be prepared to make a statement of no more than 2 minutes, if you wish to do so.

But now I have a couple of questions I would like to ask and then I will turn it over to other members of the panel for questions of this panel.

In your testimony, Mr. McCain, you talked about the recalcitrance of the school board and I am interested in why you think the school board has taken the approach which you believe they have. Why do you believe that they have chosen to seek not to comply with the orders of the court? Do you believe it is based on racial prejudice on their part or racial animosity or to what do you attribute it?

Mr. MCCAIN. I believe it is based on political pressure more than anything else.

Mr. CANADY. When you say political pressure, political pressure coming from what source?

Mr. MCCAIN. Well, from various sources that have not been willing, from the time the decision was handed down by the court, to accept the fact that the Cleveland schools and the State of Ohio were indeed found guilty. And therefore, were not willing to accept any remedial order. And so the pressure within the community has often been to disregard the court orders, and I believe that as a result of that many things have taken place which have hurt the fulfillment of the court order and have kept busing as a major issue when much more emphasis should have been placed over the years on improving the quality of education. And I think that the history of what has taken place in Cleveland with regard to our school board and the politics involved will point that out.

Mr. CANADY. How are the—how many members are there on the school board here?

Mr. MCCAIN. Seven.

Mr. CANADY. How are they chosen?

Mr. MCCAIN. They are elected.

Mr. CANADY. Are they elected from particular districts?

Mr. MCCAIN. They are elected at large.

Mr. CANADY. At large, OK.

Let me also ask you about the quality of education. That is something you focused on in your testimony, and I think that that is really the common ground that exists here. At least in the testimony I have heard, everybody is concerned about the quality of the education that the children are receiving. The question is how do we get there, and there is obviously disagreement about that, and if we had the answer to ensuring quality education for the children of Cleveland, that would be an answer that would be very important to a lot of other places in the country. Because we have prob-

lems with quality of education in systems throughout the country, of all sorts, systems that have not had the sorts of problems that have been discussed here, systems that have not been managed by Federal court order.

But let me—and I am aware of that—but let me ask you this, what is your view about the course of the quality of education in the Cleveland public schools over the last 20 years? Would you be among those that would say that it has declined or is it about the same or is it better—overall. And I realize it is a generalization.

Mr. McCAIN. Again, as you said, it is a generalization. I believe that based on my experience and my children, that the quality of education—the opportunity for quality of education is available. It is not available to the majority as we would like it to be. So that we do have opportunities where quality education can be achieved, but there are many students who are left out of that, you might say. I think that if I look at my oldest child, who went through Cleveland public schools when the desegregation process was just beginning, and I look at those who are currently in the Cleveland schools, I would have to admit that for them, the quality of education is not the same as what it was. I also would have to admit that I do not necessarily say that busing is the reason why that is so, there have been so many other factors that have been involved in the Cleveland schools that have helped to create that. And so I think that to identify that forced busing by itself separate from all the other factors has caused that, I would not necessarily say that.

Mr. CANADY. One point that has been made, and I will let you go on, but one point that has been made is that an enormous amount of money has been put into busing and many people believe that if you increased the amount of funding available for teaching and other resources, that that has some correlation with quality of education. There are some questions about even that relationship, but do you think that it might have been that if some of those resources had been used, that were used on busing, had been used in other ways, that there may have been a greater impact in improving quality?

Mr. McCAIN. I question that many of the resources that have been spent on busing would have been spent on other things. As I said in my statement, I would have hoped that they would have been, and I believe that if the emphasis had been placed on those things, that busing would have become much less an issue in Cleveland and the requirement of looking at forced busing—and we have moved to a place now that busing is more a position of choice than of force—and that is something we could have achieved I think much sooner if we had put the emphasis on creating that policy.

Mr. CANADY. If you could briefly tell me what those things are that should have been done.

Mr. McCAIN. I think the development of magnet schools and the expansion of magnet schools. Having served on committees that helped develop magnet schools, I know some of the politics that went into how they were developed, where they were located, those kind of things, which I think hurt the system more than helped. I think if the emphasis had been put on developing quality magnet

schools which would indeed do what magnet schools are intended to do, and that is to attract students from both races, and one of the things we know is that for years in Cleveland, we have had more people on waiting lists for magnet schools than we have had actually in those schools because part of the plan was to place those schools in buildings that were not equipped to handle the numbers that were interested in being in those schools.

So I think those are some of the kind of things that have been neglected over the years that could have helped to move us much more quickly to developing the quality of education and encouraging more people to look at Cleveland schools and the options in Cleveland schools as a very positive thing.

Mr. CANADY. OK, thank you. I have got one question which I would like to ask, first, to Ms. Mitchell.

In your testimony you referred to the school within a school concept. And I understand you are not too high on that particular concept. I would like for you to comment just briefly on your understanding of the way that works and what you see as detrimental about it, and then I would also ask Mr. McCain to comment briefly on that concept.

Ms. MITCHELL. My perception of the school within a school is when a magnet program is placed in the auspices of a traditional or regular track program and what was found at Mooney Junior High School, or at least what was stated by some of the teachers and in the media is that it created a kind of competitiveness because of the levels of stratification that existed between the different programs. For instance, the magnet school children ate at a different time, in some instances they had special classes in a different room—in different rooms I should say. They had more amenities, you know, they were partitioned or cordoned off from the general student body, and some have said that that created a very negative adversarial kind of relationship between the regular track students and the magnet school students. And so it was reported that—or speculated I should say—that Wallace got into a rift because of that with some members who were not a part of his particular group and consequently this young man was stabbed when he got off the schoolbus, stabbed through the heart, and died.

Mr. CANADY. Mr. McCain.

Mr. MCCAIN. Well, I think as Ms. Mitchell has said, there are two things that I believe are key problems with the school within a school. Often when we look at a magnet school program as opposed to developing a magnet school, we do not give to that program the emphasis that it deserves and we do not give the opportunity for the number of students to be involved in it that might want to be involved in it. The other side of it is that it also does create those problems within the school with regard to the treatment of magnet school students as opposed to the regular students within the school. And I agree with her that it causes more problems and that if we are going to develop a magnet school—and I think that is one of the things that we have done in Cleveland that has been ineffective—if we are going to develop a magnet school, then we need to develop a magnet school that is indeed a magnet school.

[Applause.]

Mr. MCCAIN. And that provides those opportunities for students to be involved in it.

Mr. CANADY. Thank you, Mr. McCain.

Mr. Hoke.

Mr. HOKE. Thank you, Mr. Chairman.

I would like to focus our attention a little bit differently for a moment. I want to address an issue that I think underlies a great deal of the problem that we have been wrestling with. And that is the question of whether the ultimate goal here is desegregation or integration, and I know there are subtle distinctions there, or if the ultimate goal here is educational quality, outcome or opportunity—educational opportunities that are equal for everyone. The underlying question is how we get to those—how we try to begin to understand what the balance is between the two and where we ought to be going. And again I am going to refer to the Thomas opinion in the *Jenkins* case because—and also I would say to the chairman and for the benefit of the people that are here today, we have several dozen copies of that decision outside the door. Anybody that wants a copy of it is welcome to take one. I would absolutely commend it to your attention, I think it is the most thorough and well-written and frankly insightful discussion of school desegregation cases that has been written. It was clearly the most thoughtful of the opinions that were written in the *Jenkins* case.

But here is the situation. We know that segregation per se is not a constitutional evil and is not itself racial isolation, let us say, not segregation, let us say racial isolation is not itself a harm. State ordered racial isolation is both unconstitutional and clearly invidious and wrong. And that is the harm that has been held to be wrong by the U.S. Supreme Court. The problem is that when you make the leap that racial isolation itself is a harm, you also have to believe that there is something inferior—and this is in the words of Justice Thomas—about blacks. Under this theory, segregation injures blacks because blacks, when left on their own, cannot achieve. To my way of thinking, that conclusion is the result of a jurisprudence based on a theory of black inferiority. This clearly should be rejected. It is wrong and ought to be thrown out on its face. Justice Thomas says that the point of the equal protection clause is not to enforce strict race mixing, but to ensure that blacks and whites are treated equally by the State without regard to their skin color. I am trying to get at the question of how you balance the goal of desegregation against the goal of mandating that every kid that goes to the Cleveland public school system gets the same educational opportunities and has the same high quality education. And I wonder—I mean surely you have all wrestled with this and I guess I would like to ask each of you to talk about it and think about it and think about it in the context of this court order and whether we have not been misguided in our focus with respect to where we really want to be going in terms of a goal.

Mr. MCCAIN. Well, if we go back to when this case was originally filed in Cleveland, I believe that the underlying point that spurred the filing of the case was the fact that quality of education was not there. And when we talk about whether or not the Cleveland public schools' quality of education today is equal to what it was 20 to 25 years ago, that is a difficult thing because it was not there for a

vast number of Cleveland school students 25 years ago, particularly those in the plaintiff class.

Mr. HOKE. If I could interrupt. I do not doubt that that was what motivated the plaintiffs, but the constitutional hook and the hook that gets it into the Federal court system is that there was State-sanctioned and State-caused segregation.

Mr. MCCAIN. And that was the next point that I was going to get to, that that was the thing that enabled it to come into the Federal court and then to get an order. I think all of us here and as has been stated, the majority, vast—virtually all of the parents of children in Cleveland, if you ask them what they are primarily interested in, quality education or desegregation, the answer certainly would be quality education.

And so I think that—and not equal education at a low quality. And I think that is what we need to be concerned that we are emphasizing. That is a difficult thing when we talk about it constitutionally because the Constitution guarantees education to all students in the United States but it does not necessarily guarantee an equal quality of education for all students in the United States. So that Cleveland students may be achieving an equal quality of education but it may be much less than what the suburban students are achieving. And that I think is what really causes the difficulty and the problem among us as parents, because what we are interested in is quality of education for all students and that that quality ought to be a high quality.

Mr. HOKE. The only thing I would suggest is that perhaps the prioritization of this has been wrong in terms of the number of dollars and the amount of energy and the amount of emotion that has been invested in the desegregation side, to the detriment of focusing the dollars and the emotion toward the educational quality side.

Ms. HAWS. I do not think the Constitution addresses education other than noting that the things that are not specifically addressed by the Constitution are left up to the individual States. The Constitution certainly does not require racial balance.

Mr. HOKE. No, but the Constitution does require equal protection and that is——

Ms. HAWS. Right, the Constitution requires equal protection and that is why we are upset that what has happened rather than guaranteeing equal protection has in effect, by court orders, done just the opposite. The court orders have required the things, and called them remedies that were what was the original problem the court orders were supposedly correcting. In other words, the court order in Cleveland did not provide equal opportunity nor did it end deliberate assignment to schools and exclusion from schools on the basis of race, which is what they supposedly were trying to do.

[Applause.]

Ms. MITCHELL. I am so glad you two went first, because Congressman Hoke can ask four or five questions at a time. I am going to try and answer—I don't know if I can define it in terms of what your priorities are, but for me as a parent, my priorities are can my child read, will he be able to graduate, does he have the courses that will enable him to get into college, will he have the skills to compete on the same level as everyone else in society. My priorities

are really education-focused. Charles Dewey, I keep thinking back to Janice Hale-Benson's book where she stated that Charles Dewey said "the education that is best for the best of us is also best for the rest of us." I want the same kind of education and opportunities for my children as Bill Clinton, Rockefeller, Nixon. If he has to go to a Jewish school to get it, if he has to go to a Catholic school, a suburban public school, even if it is predominantly white, I do not care, as long as my child comes out with the ability to compete and stand on equal footing with every other child, it really does not matter to me. It is education quality for me as a parent that counts the very most and supersedes everything else. And if in fact it is such that the desegregation order is an impediment to this, or any Federal court order, it needs to be done away with.

[Applause.]

Mr. CANADY. Mr. Flanagan.

Mr. FLANAGAN. Thank you, Mr. Chairman. I have no questions for this panel but I am going to indulge in a gratuitous commentary here on what we have heard today.

The focus of this panel is not the quality of education per se in Cleveland, that is up to Cleveland. The focus of this panel, the Federal Government of the United States, is how to rein in what our judiciary has done in the absence of our own ability to act on the proper course of action for the Federal Legislature, the Congress.

Many who have talked about busing today have confused it with being an end in and of itself. It is not that. It is a means to an end, it is a means and not to a racial equality end, but a means to a better education. That is the original goal of every order that has come down. Minority children were not getting a good education, consequently, action was necessary to get them a better education. We had to overcome the institutional problems at the local level and that resulted in new and innovative ideas to get us from here to there, one of which took the form of busing.

Now that the end of busing is in sight, in one of many ways, whether release happens or whether it is modified to the point of not existing, or whether the Federal Government acts and does away with it, you are closer to the end than to the beginning of busing. And is there rejoicing on any of these panels today? Is there happiness with the way it has turned out? You range from anger that it was ever thought of to anger at the way it turned out, and among a few guardians of the old order; the social engineers who stand forth and say, "Well, it could have worked or it might have worked or it should have worked," not even they are happy, they are shattered at the results of this.

Big Bill The Builder Thompson, once the mayor of Chicago once said, "We do what we can do." We had a problem 20 years ago and we tried to fix it and we thought of an innovative solution and that does not make busing bad per se in the frame of mind then. However, seeing its failure, to hold onto it would be atrocious—it would be a travesty and do more harm than good.

[Applause.]

Mr. FLANAGAN. I do believe that this has been the most illuminating panel of the four and much to my surprise, being that the first three panels had the smartest of the smart come and speak before—the functionaries in the matter. But here we have three

parents, three plaintiffs in the suit to come forward and actually talk about the deep and profound questions of the balance of the Congress against the courts, the profound questions of the values of desegregation in and of itself or as a means to an end, the profound and important questions offered by Mr. McCain of where are we going, what are we doing and how to assess the past, I am perfectly pleased and surprisingly so with the testimony of this last panel. And, Ms. Mitchell, I offer gratuitously you should not hold back when you speak.

[Laughter.]

Mr. FLANAGAN. I thank the chairman for having this hearing today and I thank Representative Hoke for bringing it to the subcommittee's attention on these matters in and of themselves. This was hardly the waste of time it was predicted to be, it was not grandstanding because these are important issues.

[Applause.]

Mr. FLANAGAN. These are colossally important issues for the Constitution Subcommittee of the Judiciary Committee of the House of Representatives of the U.S. Congress to take up, and rest assured we shall.

Thank you, Mr. Chairman.

Mr. CANADY. Thank you, Mr. Flanagan.

I want to thank the members of this panel, we appreciate your testimony.

Ms. MITCHELL. Thank you, Congressman Hoke.

Mr. HOKE. You are welcome.

Mr. CANADY. We do have—we are going to take a little time, we are actually past our ending time, but we will take a few moments to take comments from members of the public who may wish to make comments. So if there is anyone who wishes to do so, if you would please come forward and we will recognize you each for 2 minutes.

I am going to ask that the time that you are given actually be kept to 2 minutes and we are going to have someone who times that. And at the end of the 2 minutes, I will get a little signal which will cause me to gently tap the desk, and when I start gently tapping, if you would conclude, I would very much appreciate it, so that we can hear from several people that we have.

Now if each of you would also clearly state your name so we can have that for the record and then if you would also speak with the staff person, who is sitting here, Jacquelene, and she will make sure we have your name written down.

Now if you have written comments, we will also take those and without objection those will be included in the record.

What I am going to do, we are going to limit it to the people who are now standing in line here. OK? So if you are in line now, we will hear from you but that will about take up all the time that we have. So if you, sir, would proceed and tell us your name and give us your comments for 2 minutes. Thank you.

STATEMENT OF JOE COSTANZO

Mr. COSTANZO, My name is Joe Costanzo, I have eight children, five attended the Cleveland schools, I attended Cleveland schools,

I was a teacher in the Cleveland district for 26 years, I was a Cleveland board member, I was a State board member.

Many of the questions that you have asked I think are very simple, but it takes experience to address certain policy questions. I would like to read what I wrote because I think maybe it will give you some light.

Busing transportation is a lightning rod for all the educational ills of our Cleveland urban community. As recently as last week, September 14, the local beacon of light, the Plain Dealer, alluded to this dying horse as disappearing by the turn of the century. They agree that it has been a noble but very costly failure, yet if we, the taxpaying public, merely endure the stench of this dying horse for another 5 years, it then will be gone. Suffer in silence but pony up hundreds of millions more dollars to continue this ongoing fraud. At current rates, Cleveland public schools over the next 5 years will consume more than $2½ billion and put more than 22,000 young adults in the real world of the 21st century totally unable to function. When are we going to publicly and officially admit to the truth that we all know, busing in the Cleveland public schools has failed to produce the results promised by its perpetrators. Granted it has been a bonanza for the lawyers, the consultant experts, the desegregation administrators and other special poobahs. For the children, parents and long suffering taxpayers, court-ordered busing has been an unmitigated disaster.

It is unproductive——

Mr. CANADY. If you would please conclude. I am sorry, we are going to have to limit it to 2 minutes per person. We will be happy to include your entire written remarks in the record.

Mr. COSTANZO. The time has come to end this discredited social experiment and get on with the real business of educating kids.

[Applause.]

Mr. CANADY. Thank you, sir.

STATEMENT OF GENE DODARO

Mr. DODARO. I am Gene Dodaro, I am a citizen of Seven Hills. I am presently the executive vice president of RIGOR, Responsibility in Government, Our Right, a bipartisan or nonpartisan group, to educate our public.

And I commend you on this panel. I have been more enlightened than I thought I would. I want to say that I was educated in the Cleveland schools, both publicly and privately. I relate to what some of these people have said because I attended and graduated from Hazeldale Elementary, which at that time was a national icon in its time, it was looked on as one of the finest elementary schools in the entire Nation. I hate to say that it is not that anymore. I do not know if it even exists anymore.

So it hurts me deeply, even though I do not live within the city of Cleveland, to see the shambles to which the Cleveland City school system has gone.

I would like to say in final commentary, this meeting today, though I sat through and listened to all the testimony, I was especially impressed by and almost feared the coming of some of the testimony, when I see titles like director of a Black Women's Center, director of a National Association for Neighborhood Schools, I

am suspect of very special interest, but I want to tell you that after listening to the two ladies, I think we should turn the entire school system problem over to them.

[Applause.]

Mr. CANADY. Thank you.

STATEMENT OF JENNIFER ROACH

Ms. ROACH. My name is Jennifer Roach and I am a Cleveland public school mom.

Desegregation by definition means the color of ones outside has no bearing on where one is assigned to school. That is not the case with the so-called desegregation order in Cleveland. The term desegregation is misused to mean racial balancing, which is incorrect, because racial balancing means the color of your outside has everything to do with where you are assigned to school. Desegregation being misused in that way has been used to confuse the public so that our problems can continue and never be resolved. I presume probably some lawyer thought up that ploy but it is being replicated and used all the time. Racial balancing cannot correctly be called desegregation. Racial balancing can correctly be called enforced racism, or if you prefer, court-ordered racism.

Mr. CANADY. Thank you.

STATEMENT OF ELIZABETH HARPER

Ms. HARPER. I am a citizen of the greater Cleveland area, I was born and raised in the city of Cleveland, I am now a member in the suburb of Cleveland.

Mr. CANADY. For the record, could you give us your name?

Ms. HARPER. Yes, my name is Elizabeth Harper.

I find that transportation as it applies to education in the greater Cleveland community is not a problem. When you look at the communities of Selman and Orange and Gates Mill and the more affluent communities, you find busing is employed on a daily basis in order to transport the children to school. I would think that the cost of that transportation should be the same regardless of what community it is being employed in. So it seems to me that transportation becomes a problem only when that transportation is being done to improve integration.

Now there was recently a report that was done that appeared in the city of Cleveland that showed consistently that the urban areas are becoming more and more minority and poor white versus the suburban communities which are predominantly white. And when you look at the quality of education that takes place, you find that the quality of education in the urban areas where it is predominantly minority and poor white is considerably less than the quality of education that is taking place within other communities throughout the greater Cleveland area.

I would imagine that at the time that the original question was asked concerning the segregation of students in a school system, that what the court was trying to address was this segregation. And they were saying that in order to ensure that everyone could have quality education, that they should be transported to those schools that were already giving that quality education. And if they could not afford it, then the school district should have to pay it.

Mr. CANADY. I'm sorry, could you—you have taken a little more than 2 minutes, if you could conclude briefly.

Ms. HARPER. OK, I will try to conclude this. There was a comparison also to Kansas City, there was some mention of Kansas City. Kansas City, first of all, complied with the court order.

Mr. CANADY. I am sorry, you can finish the sentence you are in, but we have limited everyone to 2 minutes and we are going to apply that in an evenhanded way. So if you would please conclude and we will be happy to take your written comments.

Ms. HARPER. I would not like to see the Judiciary Committee of the Congress take away any possibility of remedy for minority people and poor whites that might help improve the quality of education for all.

Mr. CANADY. Thank you very much.

STATEMENT OF LUCILLE SHORT

Ms. SHORT. Hello. My name is Lucille Short. I am a product of the Cleveland public schools, I put 4 children through the Cleveland public schools, I have 10 grandchildren and I have a great grandson who is waiting to go in.

I can tell you I was around at that time when they said desegregation. What they do not seem to put into a fact is that Cleveland is geographically segregated, and I might add I believe this was purposely done. So when we started asking for equal opportunities and equal education, we were not talking about busing, we were talking about African-American children getting an equal opportunity by having the materials and teachers and buildings comparable to that of the west side children. But undoubtedly nobody took this into consideration. We were getting used books with pages tore out. I was there.

What I am saying now is undoubtedly busing has not worked out either because we are still having 50 percent of our African-American males fall out of school by the ninth grade. But they have torn down so many schools over here on the east side that east side parents would not have any place to send their elementary school children if they stopped busing now. So right now it is a necessary evil. If you really want to do something, make a way, get us some schools built, make quality schools for our children.

[Applause.]

Ms. SHORT. And that way we do not necessarily have to be bused. Every community has busing, it is just what the busing is for. Thank you.

Mr. CANADY. Thank you very much.

STATEMENT OF JOSEPHINE COUREY

Ms. COUREY. My name is Josephine Courey. In 1960 approximately, my daughter was ready for school. I inquired with educators where to send her, we had an opportunity to move out of Cleveland or remain in Cleveland, and after a great deal of research we felt Cleveland schools were the best. So my daughter was placed in a major work program which was outstanding. They had people coming from all over the world to observe what was being done in this program. She had a superb education. I had a son that followed 2 years later, major work program, neighborhood

school, they walked to school, their friends were in the neighborhood, and he also—they both went on to college, graduate school, post-graduate school. My son is at seminary. The Cleveland public schools provided that outstanding magnificent education.

The third one came along. He also was in major work. Around the seventh or eighth grade, I noticed he was not doing very much homework, yet he was getting A+s, busing had started. He was getting A+s and I thought there is something not right. So we—I determined it was the busing, so we determined to send him to St. Ignacious High School. Now he was taking algebra and other subjects that were, "advanced for him, for the grade that he was in." When he went to St. Ignacious, took the placement, he had to take algebra over again, he went from a 4.2 average in Mooney Junior High School, down to a 3.0 at this Jesuit high school. And I thank God for the high school because it also prepared him, he had the basic education in elementary, lower junior high school. Teachers were moving out of the Cleveland school system, there was the flight to the suburbs but we remained in Cleveland because we had St. Ignacious to fall back on.

Our fourth child we sent to a private school, I would not tolerate it. We did not move out of the city. The third one went to college, to graduate school, post-graduate school, he works at the Space Center, he is doing superbly. All three of them I attribute it to the formative years of education. We would never have sent our fourth one because of busing, because it had deteriorated so badly.

Mr. CANADY. Thank you very much.

STATEMENT OF JAMES J. SYKORA

Mr. SYKORA. I am James J. Sykora, currently a candidate for Cleveland School Board. I was a candidate in the early 1970's before the lawsuit was filed, also 2 years ago.

My biggest applause line at the City Club 2 years ago was when I mentioned my earlier candidacy. I said the problems were old then, they have just gotten worse since.

Busing is one of many factors that have contributed to the deterioration of the schools. Not so much busing per se but the motivation, busing for racial purposes, and especially the way it was done without community input. I attended meetings both before and after the court order. Before the court order—and I must point out, I do not myself have any children—but before the court order, people were told this matter is in court, we cannot comment on it. After the court order, people were told it is a court order, it is the law, you cannot comment on it.

I think it is very important that people, ordinary citizens, have the right to comment and thank you for listening to me. Thank you.

[Applause.]

Mr. CANADY. Thank you, sir.

STATEMENT OF ARLINE HILL

Ms. HILL. My name is Arline Hill. I am a product of the Cleveland schools, a happier time I cannot remember.

In my school, there was discipline. There was discipline all the way through. When my son went to school, all of a sudden the dis-

cipline began to disappear. So we too, like Ms. Courey, sent him to St. Ignacious. He got a super education, he did not talk back to his teachers there. He did not express any opinions unless he was asked to. We were proud of him when he graduated from St. Ignacious.

You can put a child on a bus, any bus, and if a parent has not instilled in him or her the desire to learn, that bus will take him or her no place. And that is the way I feel and a lot of others feel too. Until discipline returns to Cleveland schools, they will go nowhere.

[Applause.]

Mr. CANADY. Thank you.

STATEMENT OF DAVID MASSARO

Mr. MASSARO. My name is David Massaro, I am a retired high school English teacher.

I only have two points, let me make them very quickly. They are based on comments of Mr. Lumpkin. He talks about maximizing school choice. Mr. Gallagher who was the school board president at the beginning of this racial case said to the newspapers that the school board had a policy of open enrollment, a student can pick any school he wanted and the board would pay the busfare to take that child to that school. After 20 years and God knows how many millions of dollars now they are going to come back to the policy that Mr. Gallagher was talking about at the beginning of this affair.

The other point I wanted to make is that Mr. Lumpkin has said that he would not dream of asking to be released from the Federal court because there are 14 components that must be fulfilled. One of those components was declared unconstitutional recently by the Supreme Court of this country when they said in some school district that because the black reading scores did not match the white reading scores, that was not an excuse for the Federal court to continue supervision.

I suggest to you that as long as we hang onto those 14 components, that we will never be released from the Federal court, until we decide that we can write up our own components and determine whether they are met or not, and we do not need a Federal court for that.

Thank you very much.

[Applause.]

Mr. CANADY. Thank you, sir.

Again, I want to thank all the witnesses who have testified today, we appreciate your input. We will be holding an additional hearing on this subject in Washington, as has been mentioned earlier. This is a very important subject. The future of our country depends upon the quality of the education that all American children are receiving. It is an issue of great urgency. And the issues we talked about today are very much intertwined with that issue of quality education in America. So I want to thank all who participated. I particularly want to thank Mr. Hoke again for his leadership in preparing for this hearing, and Mr. Hoke's staff which has also been very helpful. And I would like to now recognize Mr. Hoke for some concluding remarks.

[Applause.]

Mr. HOKE. Thank you very much, Charles. I really do appreciate your calling this hearing and having it here. I think this has been tremendously helpful. I was a product of the Cleveland public schools since my mother went to Waverly Elementary and then graduated from West High School, which no longer exists. Through that education she was prepared to go to Floristone Mather and then to the University of Pennsylvania law school.

I wanted to point out one other thing and that is that we have done a little bit of Plain Dealer bashing this morning, but I think it is also fair to point out that the PD did a really extraordinary job in a five-part series about 2 weeks ago, talking about the state of education in the State of Ohio. And I would commend that to everyone's attention. It does not mention—the one thing it does not do, and I cannot begin to speculate why not, unless it is some sort of weird political correctness—but the one thing it does not mention in the entire five-part series that must have 20,000 words, is the use of busing to achieve racial balance.

Finally, I want to thank all of the people who testified, both the people who testified at the end as well as the witnesses. And I will tell you, I have personally gained a great deal from this, because what I have realized is that the legislation that we are going to shape and what I am going to introduce with respect to this is not going to be busing specific or transportation specific. What it is going to be is a more broad initiative to eviscerate—perhaps that is not the right word, but to change the way and to modify the way that the Federal judiciary through the district courts are managing on a day-to-day basis these school systems. It will not in any way take away their authority to find constitutional or violations but will require that the management necessary to get school systems into compliance will come from the Federal courts. The management, the day-to-day management, will be returned to local authorities.

[Applause.]

Mr. HOKE. So again, many thanks.

Mr. CANADY. Thank you again, Mr. Hoke.

That concludes this hearing.

[Whereupon, at 1:28 p.m., the subcommittee adjourned.]

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